

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL NO. 3:17-CV-37

UNITED STATES OF AMERICA *ex rel.*  
TARYN HARTNETT, and DANA  
SHOCHED,

Plaintiff,

v.

PHYSICIANS CHOICE LABORATORY  
SERVICES, DOUGLAS SMITH, PHILIP  
MCHUGH AND MANOJ KUMAR,

Defendants.

**APPENDIX IN SUPPORT OF THE  
UNITED STATES' MOTION FOR  
PARTIAL SUMMARY JUDGMENT AS  
TO DEFENDANT MCHUGH**

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FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL FILE NO. 3:17-CV-37  
(CONSOLIDATED WITH CIVIL FILE NO. 3:17-CV-46)

\_\_\_\_\_  
UNITED STATES OF AMERICA ex rel. )  
TARYN HARTNETT, and DANA SHOCHED, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PHYSICIANS CHOICE LABORATORY )  
SERVICES, DOUGLAS SMITH, PHILIP )  
MCHUGH and MANOJ KUMAR, )  
 )  
Defendant. )  
\_\_\_\_\_

DEPOSITION OF  
ALAN CAMPBELL

On Tuesday, October 6, 2020, commencing at 9:05 a.m.,  
the deposition of Alan Campbell was taken on behalf of Plaintiff  
at the U.S. Attorney's Office, 227 West Trade Street, Suite 1650,  
Charlotte, North Carolina, and was attended by Counsel as follows:

APPEARANCES:

KATHERINE T. ARMSTRONG, ESQ.  
Assistant United States Attorney  
227 West Trade Street, Suite 1650  
Charlotte, North Carolina 28202  
on behalf of the Plaintiff

BO CAUDILL, ESQ.  
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Matthews, North Carolina 28105  
on behalf of the Defendants

ATTENDING: Cathleen Hollowell, Investigator

REPORTED BY: Dee Anna Michaels, CVR-M, CCR  
ASHEVILLE REPORTING SERVICE

1 to every Board I've been on. The one I have  
 2 right now, we're talking about adding some  
 3 advisors in the way of, you know, bringing a  
 4 different speciality to the Board that we  
 5 don't currently have or knowledge base.  
 6 Q Do you recall a speciality or knowledge base,  
 7 if any, Avery Chapman brought as an advisory?  
 8 A I don't.  
 9 Q How about Bob Smith?  
 10 A Bob Smith I do. The man was a legend. He had  
 11 a long history with Jack Welch. He helped  
 12 American Express International open. He was a  
 13 true advisor to the Board that brought a lot  
 14 of just knowledge about running companies.  
 15 Q Was he any relation to Doug Smith?  
 16 A I have no idea. And Marcus had his father-in-  
 17 law as an advisor, yeah.  
 18 Q Did his father-in-law have any particular  
 19 skill or expertise?  
 20 A He was -- he was CEO, I believe of two Fortune  
 21 500 companies and brought a lot of experience  
 22 to the Board.  
 23 Q You mentioned earlier that there were some  
 24 tensions between Board members, can you  
 25 elaborate on that for us?

1 A Quarterly, I believe.  
 2 Q Going back to the start of PCLS.  
 3 A Sorry. I can't hear you.  
 4 Q Sorry. Yes, the scraping is getting so much  
 5 louder. Going back to your beginnings with  
 6 PCLS in 2012. I think you had mentioned that  
 7 the company was owned by Doug Smith, Marcus  
 8 Sowinski and Phil McHugh; is that correct?  
 9 A And Joe Wiegel.  
 10 Q And Joe Wiegel.  
 11 A Yeah. When I got there he had ownership in  
 12 the company.  
 13 Q What was Doug Smith's day-to-day role in the  
 14 company when you joined in 2012?  
 15 A He did not have a day-to-day role in the  
 16 company.  
 17 Q What was his role?  
 18 A He did some business development basically  
 19 that I'm knowledgeable of, but that's -- I  
 20 just remember him bringing a few different  
 21 interested parties in some of their products  
 22 and things like that to the company for us to  
 23 look at. I probably interacted with him maybe  
 24 once or twice a month. So I didn't really see  
 25 him very often, except at Board meetings.

1 A You know, other -- they didn't get along. I  
 2 mean, they -- they just didn't get along with  
 3 each other.  
 4 Q Are you aware of why they didn't get along?  
 5 A Not -- not truly. I mean, other than what I  
 6 saw and they just got offended by each other's  
 7 comments, and that's what I know. They had a  
 8 deeper history but I don't really know it.  
 9 Q Do you just recall from your tenure any  
 10 specific issues that caused tension between  
 11 the Board members?  
 12 A Tensions around bringing in advisors for  
 13 selling the company is something I do remember  
 14 that we had different opinions on who it is we  
 15 wanted to use to represent us as an investment  
 16 bank when we went out to try to sell the  
 17 company.  
 18 Q In your capacity as VP did you attend Board  
 19 meetings?  
 20 A Yes, I did.  
 21 Q All of the Board meetings?  
 22 A The majority of the Board meetings.  
 23 Q Aspirationally all of them?  
 24 A Yes.  
 25 Q And how frequently did the Board meet?

1 Q Do you recall any specifics about the products  
 2 or the other interested products he brought?  
 3 A It's been a few years.  
 4 Q Sure.  
 5 A He had some sort of testing that he was trying  
 6 to develop for early identification of cancer  
 7 -- female cancers. That's -- I can't remember  
 8 anything else at moment.  
 9 Q Did PCLS ever get into the business of cancer  
 10 detection or diagnostic testing?  
 11 A Not along those lines. We ended up doing a  
 12 clinical trial, or -- or getting into a  
 13 clinical trial for a -- I can't remember.  
 14 Prostrate or bladder cancer type of -- genetic  
 15 type of trial that we were looking at an  
 16 developing a test for it.  
 17 Q Did the company ever develop a test that it  
 18 marked and sold?  
 19 A No. When we were closing down I believe some  
 20 of that went to Vanderbilt and I don't know  
 21 what happened with it. The gentleman that was  
 22 working on that I believe went to Vanderbilt.  
 23 Q Did Doug Smith's role change at any time while  
 24 you were at PCLS?  
 25 A Like I said, he just -- he wasn't very

1 of that type of experience they did not have  
 2 when I came to the company. They -- they did  
 3 have, and Joe Wiegel especially, the clinical  
 4 side of the lab. He was a laboratory expert.  
 5 Q And did you have higher work experience in  
 6 healthcare regulatory and compliance areas?  
 7 A As chief financial officer of two different  
 8 home care companies and a outpatient therapy  
 9 center and other physician practices, I'd had  
 10 a lot of exposure to compliance and -- in my  
 11 role as chief financial officer.  
 12 Q In your role as CFO with companies prior to  
 13 PCLS were you familiar with rules and  
 14 regulations pertaining to billing the Medicare  
 15 program?  
 16 A Yes.  
 17 Q I'm sure that's something that comes up in  
 18 home health ---  
 19 A Yes.  
 20 Q --- is that correct?  
 21 A Frequently.  
 22 Q Were you familiar with the anti-kickback  
 23 statute ---  
 24 A Yes.  
 25 Q --- before you joined PCLS?

1 Q Got you.  
 2 A Some were groups, some were individuals.  
 3 Q Tell me what you mean when you say some were  
 4 groups.  
 5 A We would contract with a sales -- or had  
 6 contracts with a sales group that had maybe 10  
 7 or 15 independent contractors working for it.  
 8 So they were already covering the market for  
 9 things like cardiovascular and had -- had  
 10 relationships in the market. And so, we would  
 11 contract with them to present our products to  
 12 those folks that they were already out there  
 13 talking to.  
 14 Q Do you recall any of the specific concerns you  
 15 had when you joined the company about using  
 16 this type of outside outsourced sales team?  
 17 A Just like anybody else would, they're not your  
 18 employees. So, you know, we stiffened up the  
 19 training because we felt like they really  
 20 needed to hear from us and they needed to  
 21 agree to abide by our rules and protocols. We  
 22 did understand what kickbacks were and we did  
 23 not want referrals coming into us because they  
 24 were not doing things ethically or legally.  
 25 so we really worked hard to make sure that

1 A Yes.  
 2 Q And in your compliance rule did you put on any  
 3 trainings for PCLS employees or personnel?  
 4 A Yes. And when I started the majority of our  
 5 sales force was outsourced and we put a  
 6 program in place for not just our in-house but  
 7 for our outsource sales force to be trained in  
 8 compliance as well because I felt like that  
 9 was an exposure for the company. That's why I  
 10 brought Jane Pinewood in, to be honest. So we  
 11 put a lot of time, energy and effort putting  
 12 training programs together for the outsource  
 13 sales force, as well as our inside. We  
 14 eventually went from majority outsource to 85  
 15 percent in-house, hired sales team and built a  
 16 sales team inside because it was an exposure  
 17 we did not feel comfortable with.  
 18 Q And just tell us what you mean when you say  
 19 outsourced sales team.  
 20 A They were contracted to provide the sales  
 21 service rather than employed by us as part of  
 22 our team.  
 23 Q Were they, I guess, paid 1099?  
 24 A There were some -- yes. Yeah, they were all  
 25 1099 contract. Yes.

1 that did not occur, or if so, that it was on  
 2 -- on their own that they did those things,  
 3 and if we ever found out we would remove them.  
 4 Q Did you ever have to remove an outside sales  
 5 force member for what you considered to be a  
 6 violation of the kickback statute?  
 7 A Not for a violation of the kickback statute,  
 8 but maybe violation of some of our own  
 9 internal policies. I don't remember  
 10 specifics, but I do remember we asked a few  
 11 and separated from a few.  
 12 Q Do you recall what policies they had violated?  
 13 A I don't. It might simply have just been on  
 14 the relationships with the people that they  
 15 were bringing to the table we didn't really  
 16 feel like were adhering to our protocols or  
 17 something like that.  
 18 Q And when you say relationships, do you mean  
 19 relationships between the sales rep and a  
 20 referring practice?  
 21 A Yeah. We represented -- physician samples  
 22 were brought in from 40 plus states. And so,  
 23 if there was something that we saw that we  
 24 didn't like, we would investigate, and if we  
 25 didn't like it we would ask them, and if they

1 didn't like it we asked them to leave. So if  
2 they didn't want to exit that relationship, we  
3 just exited with them.

4 Q Did PCLS have written policies or procedures  
5 pertaining to anti-kickback statute?

6 A Yes.

7 Q Can you tell us about those?

8 A And online training.

9 Q Great. Tell ---

10 A CodeMap was an outsourced company that we  
11 used. I can't remember their attorneys that  
12 worked with them. But through CodeMap we did  
13 online training that was required every year  
14 for all the employees to be a part of, and  
15 contractors.

16 Q Did owners also participate in that training?

17 A Yes. Yeah, I actually brought in compliance  
18 experts to work with the Board and do training  
19 sessions with the Board as well.

20 Q Do you recall about on how many occasions you  
21 had compliance experts come in and do that?

22 A It was at least annually. It wasn't that many  
23 years, so a couple of times.

24 Q Right. We're talking about 2013 through 2016  
25 probably?

1 Q Do you recall the circumstances that led to  
2 him becoming the CEO of PCLS?

3 A Yeah, we were actually preparing the company  
4 for sale and had brought in a group, Black  
5 Arch Partners is an investment bank here  
6 locally, and it was -- I can't remember, but I  
7 believe it was their suggestion that we have  
8 it a little bit more formalized. And we knew  
9 that as a company that we needed a little bit  
10 more formal structure than what they had  
11 loosely had before. And so, they decided Joe  
12 was the operator and they would make him the  
13 CEO. And they stepped down in their roles and  
14 that's when Marcus transitioned his compliance  
15 role to me and quality to me.

16 Q I want to make sure I've got the timeline  
17 correct. You -- when did PCLS begin preparing  
18 itself for sale?

19 A '14 to '15, but I don't remember exactly when  
20 now. Sorry.

21 Q That's okay. And what was the reason for that  
22 decision to sell the company?

23 A It had grown significantly and the advice of  
24 some of the advisors was, you know, it's time  
25 to possibly look at taking some chips off the

1 A Yes.

2 Q Do you recall any of the specific topics that  
3 the Board received training on?

4 A The generalities around anti-kickback training  
5 on -- I don't remember all the specifics, but  
6 it was your traditional canned sort of  
7 training package that you would use for your  
8 employees every year. We just did it  
9 specifically to the Board.

10 Q Going back to an earlier line of questions.  
11 When you joined the company in 2012 what was  
12 Joe Wiegel's role specifically? His day-to-  
13 day responsibilities?

14 A They had -- they were each presidents of  
15 something and I don't remember what. Marcus'  
16 I did remember because I worked a lot with  
17 Marcus. Eventually Joe's president role  
18 because CEO. Phil's was over sales and  
19 marketing. And I guess -- I don't even  
20 remember what Doug's was because I never saw  
21 him that often.

22 Q Do you recall when Joe Wiegel became CEO for  
23 the company?

24 A I don't. It was probably in '15, but I don't  
25 remember.

1 table and getting something for their invested  
2 time and effort. And they first brought in a  
3 couple of different investment banking groups  
4 to talk to us about that very concept, and  
5 then choice Black Arch Partners. And it was  
6 about a year's time that we went through our  
7 own quality of earnings review outsourced with  
8 Ernst and Young. We had a clinical and  
9 compliance review that was done by an  
10 outsourced company as well. I can't remember  
11 their names right now, but we did have that  
12 done, and had very successful audits to  
13 prepare us for sale. And ultimately after a  
14 year's time there were offers brought to the  
15 table and a vote was taken to not take those  
16 offers at the time and to wait a year because  
17 we had just carved out a chunk of business  
18 that we didn't want basically as part of our  
19 company and had disassociated from, and the  
20 advisors had recommended waiting a year or two  
21 because we thought we could regrow that back.

22 Q What was the chunk of business that you all  
23 carved out at that time?

24 A It was in Texas and it was a company that  
25 they'd had relationships with when they formed

1 Q Did you interact with Mr. McHugh in your  
2 initial role in 2012?

3 A Very limited. But he would -- he was very  
4 interested in financials of the company. So  
5 to that extent I did have a lot, but not in  
6 his role of what he was doing. It was more  
7 along the lines of just the financial  
8 reporting for the company.

9 Q Did you eventually kind of interact more with  
10 Mr. McHugh as your role in the company  
11 developed into a VP?

12 A I'm not sure of the question. Can you  
13 rephrase it?

14 Q Sure. I think you mentioned that you had  
15 limited -- limited interactions with Mr.  
16 McHugh with the exception of financial  
17 discussions in 2012; is that correct?

18 A Did that expand out? Absolutely. As my role  
19 grew into legal and compliance I did have more  
20 interaction with him. Customer complaints  
21 that came in on the quality side, obviously we  
22 had frequent customer complaints that we had  
23 to deal with, or patient complaints about  
24 their tests and things like that. He was  
25 always very interested in those conversations

1 A Yes.

2 Q How did Mr. McHugh's role at PCLS change  
3 throughout your tenure?

4 A We brought in someone to head up all of our  
5 sales. Paul Schmidt, the CFO, actually  
6 stepped over and took over running sales. I  
7 don't recall exactly what timeframe that  
8 happened, but about the same time that -- that  
9 Marcus and each of them stepped down from  
10 their other roles and Joe became the CEO and  
11 became the person running the company everyday  
12 Phil began to step down as well and became  
13 more of an active Board member than anything  
14 else, but interacted heavily still with the  
15 with the sales leader. Her name was Robin  
16 Marchin, that I had a prior experience with,  
17 and she worked for me in another company and  
18 we brought her into head up sales in  
19 marketing. And she grew a sales force that  
20 was employee based.

21 Q So Mr. McHugh stepped down from his role as  
22 CEO; correct?

23 A I remember each of them having president  
24 roles, but I don't remember him having a CEO,  
25 but he acted like the CEO for some period of

1 that we were making sure we were on top of so  
2 that it didn't hurt the image and sales of the  
3 company. So that was really his domain.

4 Q Do you recall any other topics that you  
5 interacted with Mr. McHugh about after you  
6 became VP?

7 A It was -- there were a lot of topics and,  
8 again, it would be around patient complaints  
9 or quality measures and things like that, or  
10 -- or the legal process taking too long to  
11 onboard a new group of sales people that he  
12 was trying to push through, and we were trying  
13 to slow down and make sure we vetted out  
14 things like that.

15 Q Were these more independent contractor sales  
16 groups?

17 A Yes.

18 Q So the compliance department would vet an  
19 independent contractor before that person or  
20 entity was brought in?

21 A To the extent that we would do background  
22 checks and all of that, yeah.

23 Q Limited in some sense ---

24 A Right.

25 Q --- is that correct?

1 time.

2 Q And then at some point Mr. Wiegel became the  
3 formal CEO?

4 A Yeah.

5 Q Did Mr. McHugh, after the point where Mr.  
6 Wiegel became CEO still exercise control over  
7 PCLS operations?

8 BY MR. CAUDILL:

9 Objection to the form. You can answer.

10 BY THE DEPONENT:

11 He did not. Joe is a very independent  
12 operator.

13 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:

14 Q Mr. McHugh remained heavily involved, I think  
15 from your prior testimony, in the sales and  
16 marketing aspect of the company after Mr.  
17 Wiegel became CEO?

18 A He -- it weaned overtime. He had a long  
19 tenure with that part of the company and  
20 helped start the company and grew all of that.  
21 So he did stay somewhat involved working to  
22 help Robin in her new role.

23 Q Did Robin stay on to lead the sales team until  
24 the sale of PCLS?

25 A No. No, she did not. Paul, and I don't

1 remember why, decided to take it on himself  
 2 and exit Robin at some point.  
 3 Q And Robin left the company at that point?  
 4 A Yes.  
 5 Q And you don't recall the circumstances?  
 6 A I don't, no.  
 7 Q But did Paul ---  
 8 A I tried not to be involved because she and I  
 9 had worked together prior, so yeah.  
 10 Q Did Paul stay on in that role until the  
 11 company was sold?  
 12 A Yes -- well, no. He left probably February of  
 13 '16. In that -- somewhere in that timeframe.  
 14 Q Who took over at that point in the sales side?  
 15 A Joe. And -- I'm sorry. They did bring up  
 16 someone internally, but I don't remember who.  
 17 Q As VP were you involved in I guess what I  
 18 would consider kind of the HR issues,  
 19 personnel issues of the company?  
 20 A Somewhat, but not a lot. But, of course, I  
 21 was involved if there were any complaints that  
 22 went to any types of hearings. That's prior  
 23 depositions. That's where I was involved.  
 24 Q Yeah, I meant to ask you what types of  
 25 depositions.

1 Q Do you know anything about what his  
 2 involvement was from when the sales team asked  
 3 him to go out and meet with potential referral  
 4 sources?  
 5 A Just to represent our lab, and I'm not sure of  
 6 any of the specifics other than a typical  
 7 sales approach.  
 8 Q Are you aware of any of the specifics as to  
 9 how PCLS marketed itself to physician  
 10 practices ---  
 11 A Oh, yeah.  
 12 Q --- or potential referral sources?  
 13 A Absolutely. We developed some pretty unique  
 14 products that we thought that -- and testing  
 15 capabilities that other labs did not have. We  
 16 had a very high level of quality in our lab.  
 17 So physicians who were looking for accurate  
 18 testing and reporting that was delivered to  
 19 them within a 24 to 48 hour timeframe, those  
 20 types of things were what differentiated us  
 21 from a Lab Corp who may take five to seven  
 22 days to generate a test result and get a  
 23 report back, and our turnaround times were  
 24 much better than theirs. And the quality of  
 25 our test, again, and the numbers of things

1 A Yeah, yeah. When we had employee issues I  
 2 would go in and help in the arbitrations and  
 3 things like that.  
 4 Q Were you involved in hiring or firing  
 5 positions?  
 6 A The only ones were the ones that were relative  
 7 to me. So billing and collections and the  
 8 quality department and those areas.  
 9 Q Was there someone at PCLS who you considered  
 10 to have authority over hiring and firing?  
 11 A We did have an HR director and Joe was often  
 12 very involved in those?  
 13 Q Do you recall who your HR director was?  
 14 A I don't. If I think of it I'll tell you, but  
 15 I can't remember offhand.  
 16 Q Sounds good. Do you know if Mr. McHugh was  
 17 also acting as a sales representative for PCLS  
 18 at any point?  
 19 A Not as a sales representative, but they would  
 20 ask him to go meet certain potential referral  
 21 sources.  
 22 Q Who is the "they" that would ask him?  
 23 A The sales team. If they had a meeting with a  
 24 big opportunity or something like that he  
 25 would be involved.

1 that we could pick up in our samples and  
 2 analyze for that we had validated that other  
 3 labs did not. Like Ketamine was a newer one  
 4 that we had developed a test for. Things like  
 5 that were what differentiated us to the  
 6 physicians.  
 7 Q Do you know how the owners of the company were  
 8 compensated?  
 9 A Joe had a salary. An annual salary of CEO.  
 10 Marcus did for some period of time as well  
 11 because he was active day-to-day, and so did  
 12 Phil. But once they stepped out of their  
 13 roles they did not receive, I don't believe --  
 14 I can't remember, to be honest with you. If  
 15 they did, it wasn't very much at all. It  
 16 might have been just enough to pay insurance  
 17 or something like that. But their activity  
 18 really stopped on a day-to-day basis and,  
 19 therefore, they did not earn a salary. Joe --  
 20 Joe was the only one with an annual salary.  
 21 Q Are you aware of the company making any  
 22 distributions or profits to the owners?  
 23 A They did. There were profit and tax  
 24 distributions for the '11 and '12, possibly  
 25 '13 time period.

1 Q But do you recall any of the specifics and  
 2 those distributions?  
 3 A I just provided a lot of reporting on those  
 4 and it was close to 100 million dollars in  
 5 profit and tax distributions over that period  
 6 of time.  
 7 Q Would that 100 million dollars be between the  
 8 owners of the company?  
 9 A Yes.  
 10 Q And at that point we're talking about Smith,  
 11 Sowinski and Phil McHugh; is that correct?  
 12 A And Joe Wiegel.  
 13 Q And Joe Wiegel?  
 14 A Yeah.  
 15 Q Are you aware of any distributions from the  
 16 company to any of the individual owners after  
 17 2013?  
 18 A I don't recall any.  
 19 Q Is that something you would be aware of in  
 20 your role?  
 21 A It would, I just -- if it was, it wasn't a  
 22 lot. And my timeframe might be slightly off,  
 23 but it's -- to my remembrance it was close to  
 24 100 million dollars of profit and tax  
 25 distributions that we had given out. I don't

1 Q Where did PCLS maintain bank accounts?  
 2 A I can't remember. It originally was First  
 3 Union, but I can't remember.  
 4 Q Did PCLS maintain more than one company bank  
 5 account?  
 6 A We had -- well, we may have had a few  
 7 different accounts for lock boxes and things  
 8 like that for receipts that were coming in. I  
 9 don't remember exactly what the structure was,  
 10 but it was all with one bank that I recall.  
 11 Q Who would have authority to, I guess, access  
 12 PCLS accounts? Who would have the authority  
 13 to access PCLS accounts?  
 14 A Paul Schmidt as the CFO and Joe. I don't  
 15 recall if I did or not. I might have.  
 16 Q Did the owners have access to PCLS accounts?  
 17 A I don't think believe so, but I don't remember  
 18 how ---  
 19 Q You don't recall either way?  
 20 A Yeah. I don't believe so.  
 21 Q What do you know about Doug Smith's  
 22 professional background before joining PCLS?  
 23 A Doug was a physician. I believe family  
 24 practicing physician.  
 25 Q Do you recall what state he was practicing in?

1 recall anything more than that.  
 2 Q Did the owners get paid as a result of the  
 3 sale of PCLS in 2016?  
 4 A I don't think so, but I don't know. There was  
 5 a large number of vendors and other folks that  
 6 needed to be paid before any distributions  
 7 were made. I did hear that there was a little  
 8 bit of money left over after that that was  
 9 used to pay maybe Joe back a little bit of the  
 10 money -- he put money back into the company  
 11 when the other three did not when we were  
 12 going into hard times.  
 13 Q Do you know approximately when Joe put money  
 14 into the company?  
 15 A It was in '16, but I can't remember exactly  
 16 when.  
 17 Q Were the other owners asked to put in money to  
 18 the company?  
 19 A Yes.  
 20 Q And they declined to do so?  
 21 A Yes.  
 22 Q Were there any discussions about that  
 23 particular topic that you were involved in?  
 24 A No, it was basically Executive Board level  
 25 discussions.

1 A Florida. And that he lost his license because  
 2 of an issue related to over prescribing, and  
 3 thus the genesis of the idea for the  
 4 toxicology company.  
 5 Q And are you familiar with a company called  
 6 MedX?  
 7 A It rings a bell but I can't remember.  
 8 Q Do you know anything about Doug Smith's  
 9 relationship with MedX?  
 10 BY MR. CAUDILL:  
 11 Objection, lacks foundation. You can answer.  
 12 BY THE DEPONENT:  
 13 I don't recall.  
 14 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 15 Q Are you familiar with a practice called  
 16 Southeast Spine and Pain Associates?  
 17 A Again, it rings a bell, but I can't remember  
 18 exactly.  
 19 Q How about Dr. Alan Foster?  
 20 A That I do remember. I believe it was in  
 21 existence prior to my coming onboard, and it  
 22 may have been with the Southeast Spine. And  
 23 now that you say that, MedX may have had some  
 24 sort of services they were providing, but I  
 25 can't recall exactly what that was.



1 Q MedX providing services to Dr. Foster's  
2 practice?  
3 A I remember -- I just remember that there was  
4 some sort of computer technology that was  
5 being provided to one or two practices and Dr.  
6 Foster was just a name I remember about that,  
7 and I believe MedX was the company that was  
8 doing it, but that's all I -- I really  
9 remember about that.  
10 Q Sure.  
11 A Yeah.  
12 Q Was Dr. Foster a provider who referred to  
13 PCLS?  
14 A I don't -- I don't remember. I don't remember  
15 him being around our point of discussion, so  
16 (pause) ---  
17 Q Were you aware as to whether or not Doug Smith  
18 handled any accounts for PCLS? Customer  
19 accounts?  
20 A No.  
21 Q Are you familiar with the name Jim Lord?  
22 A Again, slightly. It's been a while. I  
23 believe he had something to do with the  
24 computer side of that, but that's all I ---  
25 Q In your role as vice president over finance,

1 Q Are you aware of any instances in which Mr.  
2 McHugh made loans or any of his companies made  
3 loans to physicians?  
4 A Yes.  
5 Q What do you know about that?  
6 A I just recall that he made a significant loan  
7 to Dr. Florete, I believe was his name, and we  
8 did a lot of work around localizing that issue  
9 and dealing with it as a company.  
10 Q Now, I don't want to get into what in-house  
11 counsel or the companies outside legal counsel  
12 said or advised you on. Does that make sense?  
13 A Uh-huh. (Affirmative)  
14 Q I'm interested more to know factually the  
15 chronology of events. Does that make sense?  
16 And then I can ask you some questions about  
17 that.  
18 A Okay.  
19 Q But just as a warning, I'm not trying to  
20 intrude on the company's privilege on that  
21 issue, to the extent it has one. When did you  
22 first become aware of the Florete loan?  
23 A I can't remember the timeframes, but it was  
24 probably late 2015, early 2016.  
25 Q When you became aware of the Florete loan had

1 legal and compliance were you ever asked to  
2 evaluate whether or not PCLS could provide  
3 computer software such as MedX to referring  
4 provider practices?  
5 A No.  
6 Q Are you aware if anyone in the compliance  
7 department ever evaluated that type of  
8 machine?  
9 A Marcus.  
10 Q Tell us about that.  
11 A I just remember Marcus having been involved in  
12 that discussion, and that's where I've heard  
13 these names.  
14 Q Do you remember about what timeframe Marcus  
15 would have been in on those discussions?  
16 A '13 -- I'm sorry. It would have been '11,  
17 '12, somewhere in there. 2011, 2012.  
18 Q So before you transitioned into your role?  
19 A Yeah. Yeah.  
20 Q Do you recall anything else about those  
21 conversations that we haven't touched on yet?  
22 A No. I think Marcus was making sure that we  
23 were being compliant, and if it -- if it was  
24 not, that we regs it in. But that's all I  
25 truly remember.

1 it already been made?  
2 A Oh, yes. Yes.  
3 Q Were you the first person at PCLS, outside of  
4 Mr. McHugh, to become aware of that loan?  
5 A I don't believe so, no.  
6 Q How did it come to your attention?  
7 A I believe Joe Wiegel.  
8 Q Do you know how it came to Joe Wiegel's  
9 attention?  
10 A I don't know.  
11 Q What steps did you take after you learned  
12 about the Florete loan?  
13 A We went and got our outside counsel involved  
14 immediately, both through McDonald Hopkins and  
15 through Jane Pine Wood at McDonald -- I'm  
16 sorry, McDonald Hopkin, and then Jeff Hayes  
17 group at Womble Carlyle.  
18 Q To your knowledge, had PCLS engaged Jane Pine  
19 Wood or Jeff Hayes on this issue prior to the  
20 loan being made?  
21 A Not to my knowledge.  
22 Q To your knowledge, was anyone at PCLS aware of  
23 this loan before it was made?  
24 A Not to my knowledge.  
25 Q And other than Jane Pine Wood and Jeff Hayes,

1 did any other counsel review the Florete loan,  
 2 to your knowledge?  
 3 A Eventually we brought in from McDonald  
 4 Hopkins, Bruce Reinhart.  
 5 Q And Mr. Reinhart actually represented PCLS in  
 6 this investigation; is that correct?  
 7 A I believe so.  
 8 Q For a time?  
 9 A For a time.  
 10 Q But he no longer represents them, to your  
 11 knowledge?  
 12 A Not to my knowledge.  
 13 Q You wouldn't know; right?  
 14 A I wouldn't know.  
 15 Q So I understand PCLS brought in counsel to  
 16 review the Florete loan issue. What was the  
 17 result?  
 18 BY MR. CAUDILL:  
 19 Objection.  
 20 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 21 Q What action was taken as a result of the  
 22 company's investigation?  
 23 A We were advised and, I believe, we stopped  
 24 accepting samples from the physician's  
 25 practice, and I believe we refunded any

1 governmental monies, but I don't 100 percent  
 2 recall that, if we actually refunded them. I  
 3 do remember there was another matter that we  
 4 refunded the monies for, but not this one  
 5 because I think it was a very small dollar  
 6 amount, if I can remember correctly. And then  
 7 we did receive further advice later on that --  
 8 that the actions that were involved in  
 9 creating that loan were actually done  
 10 appropriately. So I don't know if we ever  
 11 restarted accepting samples from them again or  
 12 not. I can't remember.  
 13 Q Let me back up and make sure I understand.  
 14 You stopped accepting samples from Dr.  
 15 Florete's practice; is that correct?  
 16 A While we were investigating it, for sure.  
 17 Q And after the investigation you stopped  
 18 accepting samples from Dr. Florete?  
 19 A I believe so, but at some point we may have  
 20 started receiving them again. I just don't  
 21 recall.  
 22 Q And then I think you said you believe but you  
 23 don't know if the company paid any money back  
 24 to Medicare related to ---  
 25 A Yeah, for some reason I remember us getting

1 the dollar amounts and everything together and  
 2 the patient samples and I believe we were  
 3 prepared to do that. I just don't remember  
 4 whether or not we actually did it. I believe  
 5 we did, but I don't remember 100 percent.  
 6 Q You didn't personally push the bottom to make  
 7 the repayment to the government?  
 8 A I may or may have. I just don't remember  
 9 right now. There were the two going on at the  
 10 same time, and I know for certain we did the  
 11 one in Indiana. I just -- I can't remember on  
 12 this one. There was a lot of discussion about  
 13 whether or not it was something that should  
 14 have been or not.  
 15 Q Who would have been involved in the decisions  
 16 to make a repayment to Medicare related to the  
 17 Florete referrals?  
 18 A That would have been Joe Wiegel and the Board.  
 19 And obviously that was on advisory from out  
 20 outside counsel.  
 21 Q And tell me how the actual repayment, if it  
 22 was made, would have been made?  
 23 A We would have just processed a check for  
 24 specific patient samples that we had received  
 25 and done the services for.

1 Q And who would have actually submitted that  
 2 check?  
 3 A Paul Schmidt.  
 4 Q Would the funds have come out of a PCLS bank  
 5 account?  
 6 A Yes.  
 7 Q But sitting here today you think it was done  
 8 but you can't recall?  
 9 A Not 100 percent.  
 10 Q You can't say 100 percent. Got you.  
 11 Understood. You did mention that there was a  
 12 repayment related to another issue. Tell me  
 13 about that.  
 14 A There was a practice in Indiana that we found  
 15 out that Manoj Kumar, if I remember his last  
 16 name, who was involved with our sales  
 17 organization, actually led it for a period of  
 18 time, was servicing in some capacity of  
 19 management of the practice. And when we found  
 20 that out we obviously ceased accepting  
 21 samples, and then ultimately we did refund the  
 22 money to the government for that, which would  
 23 have been any Medicare, Medicaid or  
 24 governmental entities.  
 25 Q And how do you know that money was reflected?

1 A I pulled the information together and -- I  
 2 don't 100 percent know that Paul wrote the  
 3 check, but I saw it clear the books.  
 4 Q When did you see it clear the books?  
 5 A It was in my -- my accounting reports. I  
 6 don't remember.  
 7 Q Do you recall the amount of the check?  
 8 A I believe -- no, I don't. I believe it was  
 9 some \$30,000. It may have been more. I just  
 10 don't remember right now.  
 11 Q But Paul would have physically wrote the  
 12 check?  
 13 A Or his department. The finance.  
 14 Q But you can't confirm whether or not that was  
 15 done?  
 16 A I'm sure it can be confirmed. I just don't  
 17 recall.  
 18 Q How did the lab come up with the \$30,000  
 19 figure?  
 20 A Again, that's an estimate. I don't recall the  
 21 amount. What we did do was pull, again, every  
 22 sample that was processed for that facility  
 23 and refunded the dollars that we had received  
 24 on behalf of those samples. And there was a  
 25 list of patients.

1 A I can't remember.  
 2 Q Did that lead to an investigation?  
 3 A Yes, immediately.  
 4 Q Was the company's counsel involved in that  
 5 investigation?  
 6 A Yes.  
 7 Q Prior to the circulation of this check in or  
 8 around December of 2015 had the compliance  
 9 team at PCLS ever vetted Mr. Kumar's  
 10 employment with the company?  
 11 A I'm sorry. Can you repeat the question?  
 12 Q Sure. Before you found out about the check  
 13 and there was an investigation, had compliance  
 14 at PCLS ever vetted Mr. Kumar's employment or  
 15 vetted Mr. Kumar?  
 16 A Are you asking that he was employed by the  
 17 company? That we vetted that he was actually  
 18 employed by the company?  
 19 Q I think you mentioned earlier that compliance  
 20 would, the independent contractors, or  
 21 entities, or other potential employees.  
 22 A Manoj had a special arrangement through his  
 23 early association with the company. He was  
 24 running our sales division and I believe for  
 25 some period of time he was a 1099 contractor,

1 Q Did you look during the specific timeframe?  
 2 A Yeah, it was -- it was since inception of the  
 3 practice samples that we had received. It was  
 4 over a long period of time.  
 5 Q Did PCLS stop accepting referrals from that  
 6 provider in Indiana?  
 7 A Yes.  
 8 Q Do you recall the provider's name?  
 9 A I don't.  
 10 Q Does Dr. Masimore sound familiar?  
 11 A Yes.  
 12 Q Do you believe that's the provider?  
 13 A I do.  
 14 Q When did it come, if you know, to PCLS'  
 15 attention that Manoj Kumar was the practice  
 16 manager for Dr. Masimore?  
 17 A For some reason I believe it was in December  
 18 of '15, but I may be wrong. It's been a  
 19 while. I just -- I thought it was during the  
 20 holidays that we saw a copy of a check that  
 21 was written to Manoj someone was circulating  
 22 that they had taken on their phone.  
 23 Q Who was the check written by?  
 24 A I think it was the practice.  
 25 Q But you're not sure?

1 and then rolled into an employee role. Yes.  
 2 Q Thank you for clarifying that.  
 3 A Yes.  
 4 Q Did Mr. Kumar joint the company as a  
 5 contractor prior to you joining the company?  
 6 A Yes.  
 7 Q When you joined and took on the compliance  
 8 role were you ever asked to look at Mr.  
 9 Kumar's either independent contracting  
 10 relationship with the company or his  
 11 employment with the company?  
 12 A No, but we did have outside counsel look at  
 13 that.  
 14 Q When did outside counsel look at that?  
 15 A I don't remember.  
 16 Q Was it ---  
 17 A It was, I believe, during his transition of  
 18 roles from an outside to an employee, because  
 19 there was a negotiation that was had with him  
 20 on that by Phil McHugh, and I'm not sure if  
 21 Joe was involved with that.  
 22 Q During Mr. Kumar's transition from contractor  
 23 to employee did Mr. Kumar disclose that he was  
 24 managing at least one physician practice in  
 25 Indiana?

1 A I think he disclosed just the opposite. That  
 2 he was not involved in any practices.  
 3 Q So you recall Mr. Kumar making an affirmative  
 4 statement to the effect that he was not  
 5 involved in any practices?  
 6 A I remember him saying that in a meeting.  
 7 Q Do you remember when that meeting was?  
 8 A I don't. I just -- I do remember that we had  
 9 a discussion and he was adamant that he did  
 10 not have any dealings with any other  
 11 practices. I was in a meeting with -- I  
 12 believe Marcus was in that meeting with him.  
 13 it may have been Meg, but one of the two, I  
 14 think.  
 15 Q Was Mr. McHugh in that meeting?  
 16 A No.  
 17 Q And would that meeting have taken place during  
 18 this transition from contractor to employee?  
 19 A Yes.  
 20 Q Are you aware of how Mr. Kumar became involved  
 21 with PCLS? I understand it predated your  
 22 employment, but ---  
 23 A Yeah. He had a relationship with one of the  
 24 partners and I don't remember who.  
 25 Q Was it a relationship with Mr. McHugh?

1 well. I believe that was Mike Munro at the  
 2 time, and Meg. I'm sure Paul Smith was  
 3 involved because he worked a lot with Joe on a  
 4 lot of issues. I don't remember anybody else.  
 5 Q Did Mr. Kumar receive any compensation in  
 6 connection with this termination?  
 7 A I don't believe so.  
 8 Q Was that ever discussed, to your knowledge?  
 9 A I don't recall.  
 10 Q Were you ever -- I guess if you don't recall  
 11 it ---  
 12 A I don't -- I don't believe so because of the  
 13 circumstances.  
 14 BY MS. ARMSTRONG:  
 15 We've been going for almost an hour and a  
 16 half. Do you mind if we take a five minute  
 17 break?  
 18 BY THE DEPONENT:  
 19 I was just about to ask.  
 20 (OFF THE RECORD)  
 21 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 22 Q Are you aware of any loans made to Dr.  
 23 Jayachandran?  
 24 A No.  
 25 Q I'm sorry.

1 BY MR. CAUDILL:  
 2 Objection. You can answer.  
 3 BY THE DEPONENT:  
 4 I don't remember.  
 5 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 6 Q Was Mr. Kumar eventually terminated from PCLS?  
 7 A Yes.  
 8 Q Were you involved in that?  
 9 A Yes.  
 10 Q Could you tell us about the circumstances?  
 11 A It was relating to this incident around the  
 12 fact that he had received funds from the  
 13 practice in Indiana for managing the company.  
 14 After we'd concluded the investigation and  
 15 confirmed that he was asked to leave.  
 16 Q Are you aware as to whether or not Mr. Kumar,  
 17 after he individually became an employee of  
 18 PCLS, continued to own a company that was a  
 19 channel partner with PCLS?  
 20 A No.  
 21 Q Is CSS familiar to you?  
 22 A I don't recall it.  
 23 Q Who was involved in the discussions regarding  
 24 Mr. Kumar's termination?  
 25 A Joe, outside counsel, inside attorneys as

1 A No. I'm sorry.  
 2 Q Other than the loan to Dr. Florete which we've  
 3 already discussed, are you aware of Mr. McHugh  
 4 making or being involved in loans to any other  
 5 practice?  
 6 A Not that I recall.  
 7 Q Are you familiar with desktop analyzers?  
 8 A Yes, somewhat.  
 9 Q Can you tell us what you know about them?  
 10 A Sure. So as I mentioned earlier, PCLS  
 11 performed confirmation level testing with very  
 12 high grade equipment that could discern not  
 13 just the individual drugs that you've taken,  
 14 but also the metabolites that were within your  
 15 body for having taken them. A desktop  
 16 analyzer just analyzes the presence of an  
 17 opioid, for instance, and not specific to the  
 18 drug itself. In a doctor's office they often  
 19 use that as a first in line of testing. And  
 20 then if there's something present they send it  
 21 off for more of definitive tests that we would  
 22 perform. We actually did that as part of our  
 23 process because it helped us to get the  
 24 quality of our tests to make sure that we were  
 25 analyzing against the same compounds and

1 coming up with an answer that made sense when  
 2 we put the two together.  
 3 Q And I think I've heard it referred to as  
 4 qualitative versus quantitative testing.  
 5 A Yeah, qualitative meaning that there is  
 6 something present. Quantitative, how much and  
 7 specifically as to what it is.  
 8 Q Are you aware of whether PCLS ever provided  
 9 physician practices with an analyzer program?  
 10 A I don't believe so. When you say ever, there  
 11 may have been some prior to my existence that  
 12 they actually set offices up that way, but I  
 13 don't remember 100 percent. We did talk about  
 14 instituting a program to actually do that and  
 15 we looked into it, but I don't believe we  
 16 actually enacted it.  
 17 Q Do you remember what the perimeters of that  
 18 program that you were discussing were?  
 19 A I don't. I don't.  
 20 Q The bottom line, the company did not do it?  
 21 A I don't believe so.  
 22 Q Are you aware of Mr. McHugh being involved in  
 23 the provision of analyzers to doctors offices?  
 24 BY MR. CAUDILL:  
 25 Objection to the form. You can answer.

1 Q During his tenure at PCLS were you aware that  
 2 he was involved in that type of work?  
 3 A I don't believe so, because we would have  
 4 addressed it.  
 5 Q So if someone at PCLS was providing analyzers  
 6 or reimbursing providers for their purchase of  
 7 analyzers is that something that the  
 8 compliance department would want to know  
 9 about?  
 10 A Yes.  
 11 BY MR. CAUDILL:  
 12 Objection to the form of that question. It  
 13 also calls for speculation.  
 14 BY THE DEPONENT:  
 15 We would have definitely been interested if  
 16 someone had been paying a doctor for anything  
 17 and would have vetted whatever they were doing  
 18 through our counsel, because that was not  
 19 something that we as a company wanted to do at  
 20 all was to pay physicians for anything.  
 21 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 22 Q Are you familiar with a Dr. Johnson?  
 23 A I don't remember.  
 24 Q What about a doctor John Nichols?  
 25 A I don't remember.

1 BY THE DEPONENT:  
 2 I don't recall his being involved with that,  
 3 but I don't know.  
 4 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 5 Q Are you aware of Mr. Kumar being involved in  
 6 the commission of analyzers to doctors  
 7 offices?  
 8 BY MR. CAUDILL:  
 9 Same objection. You can answer.  
 10 BY THE DEPONENT:  
 11 I did hear that he, after leaving, was doing  
 12 that.  
 13 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 14 Q So after he left you heard that Kumar had had  
 15 some involvement providing analyzers to ---  
 16 A Right.  
 17 Q --- referring practices?  
 18 A Yes.  
 19 Q Tell us what you learned about that?  
 20 A Just that I heard that he was out and that's  
 21 what he had been doing was helping to set  
 22 doctors up. And I don't know if that was his  
 23 full-time job or part-time job, but I do  
 24 remember hearing that he was involved in doing  
 25 some of that.

1 Q Do you recall whether or not the compliance  
 2 department at PCLS ever vetted any type of  
 3 arrangement between the lab and Dr. Nichols?  
 4 A I don't remember his name, so I don't  
 5 remember.  
 6 Q And you may have the same answer, but let me  
 7 just ask. Do you recall whether compliance at  
 8 PCLS ever vetted any arrangement between a Dr.  
 9 Johnson, John Johnson, I believe, and PCLS?  
 10 A I don't know.  
 11 BY MS. ARMSTRONG:  
 12 I'm just going to go through my notes for 30  
 13 seconds and see. Mr. Campbell, I think that's  
 14 everything I wanted to go through with you, so  
 15 I appreciate your time. Counsel for Mr.  
 16 McHugh may have some questions, and it's  
 17 possible I may have some followup after he's  
 18 done.  
 19 BY THE DEPONENT:  
 20 Sure.  
 21 BY MS. ARMSTRONG:  
 22 I'll try to go through my notes and make sure  
 23 we can wrap it up. Thank you.  
 24 CROSS-EXAMINATION BY MR. CAUDILL:  
 25 Q So, Mr. Campbell, we met off the record. My

1 you'd expect to see with that type of  
 2 transmission?  
 3 A It would be a list of the amounts that had  
 4 been billed and collected by us for each of  
 5 those patients that we were -- either that or  
 6 we would have recorrected each claim, and  
 7 that's why I don't recall the specifics of how  
 8 it happened. If we actually ended up writing  
 9 a check or if we just reprocessed each claim  
 10 back to them. I mean, there's a couple of  
 11 ways that could happen, and I just don't  
 12 recall how we did it.

13 Q Sure.

14 A Yeah.

15 BY MS. ARMSTRONG:

16 That's it. Thank you.

17 BY MR. CAUDILL:

18 Nothing for me.

19 (PROCEEDINGS IN THE ABOVE-ENTITLED MATTER WERE  
 20 CONCLUDED AT APPROXIMATELY 11:20 A.M.)  
 21  
 22  
 23  
 24  
 25

## CERTIFICATE

I, Dee Anna Michaels, CVR-M, CCR, Court  
 Reporter and Notary Public, do hereby certify that  
 the foregoing 102 pages are an accurate transcript  
 of the deposition of Alan Campbell, taken by me and  
 transcribed under my supervision.

I further certify that I am not financially  
 interested in the outcome of this action, a  
 relative, employee, attorney or counsel of any of  
 the parties, nor am I a relative or employee of  
 such attorney or counsel.

This is the 13th day of October, 2020.

\_\_\_\_\_  
 DEE ANNA MICHAELS, CVR-M, CCR

Notary Public No.: 19963300157

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<p style="text-align: right;">Page 1</p> <p>UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION Case No. Civil File No. 3:17-CV-37 (Consolidated with Civil File No. 3:17-CV-46) United States of America, ex rel. Taryn Hartnett and Dana Shoched,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs. Physicians Choice Laboratory Services, Douglas Smith, Philip McHugh and Manoj Kumar, Defendants.</p> <p style="text-align: center;">-----/</p> <p style="text-align: center;">VIDEO DEPOSITION OF DR. ORLANDO FLORETE, JR.</p> <p style="text-align: center;">BY VIDEOCONFERENCE October 8, 2020 Scheduled for 10:00 a.m. Commencing at 10:12 a.m. to 12:33 p.m.</p> <p style="text-align: center;">Taken before Sonnia Martinez, Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause. -----</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p>1 Witness: Dr. Orlando Florete</p> <p>2 Direct Cross</p> <p>3 By Ms. Armstrong 5, 88, 97</p> <p>4 By Mr. Caudill 73, 92</p> <p style="text-align: center;">E X H I B I T S</p> <p>5 United States'</p> <p>6 No. 1 Page 46 No. 2 Page 48</p> <p>7 No. 3 Page 50 No. 4 Page 66</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 ON BEHALF OF THE PLAINTIFF:</p> <p>3 R. Andrew Murray</p> <p>4 United States Attorney</p> <p>5 Suite 1650, Carillon Building</p> <p>6 227 West Trade Street</p> <p>7 Charlotte, North Carolina 28202</p> <p>8 By: Katherine Armstrong,</p> <p>9 Assistant U.S. Attorney</p> <p>10 katherine.armstrong@usdoj.gov</p> <p>11</p> <p>12 Also present:</p> <p>13 Cathleen Hollowell</p> <p>14 Investigator (contractor)</p> <p>15 U.S. Attorney's Office - WDNC</p> <p>16 227 West Trade Street, Suite 1650</p> <p>17 Charlotte, NC 28202</p> <p>18</p> <p>19 ON BEHALF OF PHILIP McHUGH:</p> <p>20 Weaver, Bennett &amp; Bland</p> <p>21 196 North Trade Street</p> <p>22 Matthews, North Carolina 28105</p> <p>23 By: Bo Caudill, Esquire and</p> <p>24 Matthew Villmer, Esquire</p> <p>25</p> <p>Also present:</p> <p>Brandon Mendiola, Videographer</p> <p>-----</p>	<p style="text-align: right;">Page 4</p> <p>1 (The following was had.)</p> <p>2 THE VIDEOGRAPHER: In the case styled</p> <p>3 United States of America, ex al, versus</p> <p>4 Physicians Choice Laboratory Services, et</p> <p>5 al.</p> <p>6 This is the video deposition of</p> <p>7 Dr. Orlando Florete, Jr. on October 8th,</p> <p>8 2020.</p> <p>9 The time is now 10:12 a.m.</p> <p>10 Would counsel please state their</p> <p>11 appearances for the record.</p> <p>12 MS. ARMSTRONG: Katherine Armstrong,</p> <p>13 Assistant U.S. Attorney on behalf of the</p> <p>14 United States.</p> <p>15 MR. CAUDILL: Bo Caudill on behalf</p> <p>16 the Defendant, Philip McHugh.</p> <p>17 MR. VILLMER: Matt Villmer on behalf</p> <p>18 of Defendant, Philip McHugh.</p> <p>19 THE COURT REPORTER: Doctor, please</p> <p>20 raise your right hand, please.</p> <p>21 Do you swear the testimony you will</p> <p>22 give will be the truth, the whole truth</p> <p>23 and nothing but the truth, so help you</p> <p>24 God?</p> <p>25 THE WITNESS: I do.</p>

<p style="text-align: right;">Page 5</p> <p>1 THE COURT REPORTER: Thank you.  2 DIRECT EXAMINATION  3 BY MS. ARMSTRONG:  4 Q. Good morning, Dr. Florete. Thank you  5 -- thank you for being here and thank you for  6 your patience as we work through some of these  7 technological glitches.  8 A. My pleasure.  9 Q. I'm sure you understand in this  10 current environment we're -- we're getting  11 used to doing things a different way.  12 Thanks for being here.  13 And we are taking your deposition  14 today in reference to the United States  15 litigation against Defendant Philip McHugh and  16 others.  17 Have you ever had a deposition taken  18 before?  19 A. Yes.  20 Q. Okay. Can you tell us just generally  21 about how many times you've been deposed?  22 A. Oh, I've been deposed related to my  23 practice over a hundred times, maybe. Much  24 more than that.  25 Q. So you don't really need me to go</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Do you have any other licensures or  2 Board certifications?  3 A. I am Board certified in  4 anesthesiology. I am Board certified in pain  5 medicine.  6 Q. And are you practicing right now?  7 A. Yes.  8 Q. Okay. What is the name of your  9 practice?  10 A. Orles, O-R-L-E-S, Pain Management and  11 Regenerative Medicine Group.  12 Q. And are you employed by Orles or are  13 you an owner of the practice?  14 A. I am the owner of the practice.  15 Q. And how long have you owned this  16 particular practice?  17 A. I opened the practice in October of  18 2019.  19 Q. Prior to opening this practice in  20 2019 where were you working --  21 A. I was --  22 Q. -- or practicing?  23 A. I was the chief medical officer of  24 the International Stem Cell Medical Center in  25 Antigua.</p>
<p style="text-align: right;">Page 6</p> <p>1 in-depth on the ground rules and instructions;  2 is that right?  3 A. Yeah.  4 Q. Okay. I'll just say, probably most  5 importantly for today, if I ask you a question  6 that you don't understand please stop and let  7 me know. If you answer one of my questions I  8 will assume that you have understood it.  9 Is that fair?  10 A. That's fair.  11 Q. Great. And if you have any problems  12 with the technology, hearing me or visual,  13 just please also let us know, okay?  14 A. Okay.  15 Q. Great. Can you go ahead and tell us  16 your full name, please.  17 A. My name is Orlando G. Florete,  18 Junior.  19 Q. And Dr. Florete, what is your current  20 occupation?  21 A. I am a pain management physician in  22 the state of Florida.  23 Q. And what type of medical degree do  24 you have?  25 A. I have a -- an M.D.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. And just generally what were you  2 doing as the chief medical officer for that  3 entity?  4 A. I created the standard operating  5 procedures, the manual for the operation of  6 the clinic, and I do the procedures in the  7 clinic.  8 Q. How long were you doing that for?  9 A. A year.  10 Q. What were you doing for work prior to  11 that?  12 A. Prior to that I was a pain management  13 specialist practicing in Jacksonville,  14 Florida.  15 Q. And what was the name of the practice  16 you were at in Jacksonville?  17 A. The Institute of Pain Management.  18 Q. And were you an owner of that  19 practice?  20 A. Yes.  21 Q. And I think the name gives us a  22 general idea of the type of practice, but  23 would you mind describing for us what services  24 the Institute of Pain Management provided?  25 A. The Institute of Pain Management was</p>

2 (Pages 5 to 8)



<p style="text-align: right;">Page 21</p> <p>1 going to buy my practice.  2 So, you know, I looked at you're  3 supposed to own 49 percent. I believe I owned  4 51 percent, I still had full control of the  5 practice and he -- he'll going to buy the  6 practice for a total of 15 million. Five  7 million of which was given on the day of  8 signing. I was supposed to receive a monthly  9 salary. And then at the end of the fifth year  10 the -- whatever is the left over of the deal,  11 that's when I get paid in full.  12 Within three to four months that we  13 did that, he start to demand -- he started to  14 demand that I fire my key people and he wanted  15 to put his own people in there. And then he  16 owned a drug testing company and he demanded  17 that I do drug testing every month for  18 confirmation. So I said, no. You know, there  19 was a clause in our contract that if I am not  20 happy within six months I can return the money  21 and I can take over the practice. But of  22 course, since we used the money already for  23 paying our debts and for expansion of the  24 practice, and by the time I realized that  25 there is this danger that we are actually</p>	<p style="text-align: right;">Page 23</p> <p>1 A. It's called the Universal Oral Fluid  2 Solution, which is based in Pittsburgh.  3 Q. May I call it UOFL going forward?  4 A. Yes.  5 Q. Okay. Is UOFL currently in business?  6 A. I have no idea.  7 Q. Okay. Have you spoken to Mr. Hughes  8 within the last five years or so?  9 A. Yes, because I still owe him some  10 money.  11 Q. Okay.  12 A. He's still demanded -- he still  13 demands that I pay him, you know, after I gave  14 him the -- my building, after I paid him a  15 significant amount of money, you know, he  16 still said that I still owe him some money.  17 Q. How much money does he say you owe  18 him?  19 A. He say -- he claim that I still owe  20 him a million dollars.  21 Q. Let's walk through some details here.  22 If I understood you correctly, as part of the  23 transaction with Mr. Hughes you were going to  24 retain a majority ownership in IPM?  25 A. No, a hundred percent ownership.</p>
<p style="text-align: right;">Page 22</p> <p>1 basically overbilling -- I mean overusing drug  2 testing beyond what I considered as useful and  3 customary and he wanted to fire my people, I  4 said no, no and no. So I turned down the  5 medical directorship that he offered, I then  6 said, I'm going to return your money, but at  7 that point in time I used the money, so I had  8 to give up actually one of my buildings to pay  9 him. And then I have to look for other  10 sources of funding to get him off my back  11 because I was in total disagreement what he  12 was doing. Because he tried to reach what I  13 strongly believe was illegal.  14 So, you know, it so happened that I  15 know Mr. McHugh and Mr. McHugh and I talk  16 about it and he offered that he can provide  17 the funding to pay off Mr. William Hughes.  18 Q. Dr. Florete, thank you for that. It  19 was a very comprehensive answer but I'm going  20 to go back and ask you a couple more detailed  21 follow-up questions before we move on to  22 Mr. McHugh.  23 Tell us just generally as to  24 Mr. William Hughes, he operated what  25 laboratory?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Oh, you would maintain a hundred  2 percent ownership?  3 A. Yes.  4 Q. Okay. He would not obtain any  5 ownership interest in your company?  6 A. No.  7 Q. Okay.  8 A. I would never allow that.  9 Q. Okay. So the -- I'm trying to  10 understand -- the 15 million was going towards  11 what, what was its original purpose?  12 A. Well, the 15 million was used to pay  13 our existing debts at the time but we are in  14 the process also of expanding the practice or  15 trying to hire more people and to buy newer  16 equipment.  17 Q. What was Mr. Hughes getting in  18 exchange for the \$15 million, I guess, you  19 didn't -- you don't call it a loan but the \$15  20 million he had --  21 A. Oh, he gets 49 percent ownership of  22 the practice.  23 Q. I'm sorry, what was that percentage  24 again?  25 A. I think -- I believe it was 49</p>

6 (Pages 21 to 24)

<p style="text-align: right;">Page 25</p> <p>1 percent.</p> <p>2 Q. 49 percent, okay. So he -- had this</p> <p>3 gone to fruition as planned he would have</p> <p>4 eventually obtained an ownership percentage?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And I think what you're saying</p> <p>7 is it never got there. You got out of the</p> <p>8 deal before he obtained an ownership interest?</p> <p>9 A. Technically when I signed the deal he</p> <p>10 became owner 49 percent.</p> <p>11 Q. Okay.</p> <p>12 A. But I still was running the practice.</p> <p>13 Only it's after three months or four months</p> <p>14 later that his minions tried -- were trying to</p> <p>15 take over the practice and trying to dictate</p> <p>16 the policy of the practice and trying to</p> <p>17 demand that we do monthly qualitative and</p> <p>18 quantitative testing so.</p> <p>19 Q. And just orient us to the time frame,</p> <p>20 when did you sign the loan agreement with</p> <p>21 Mr. Hughes?</p> <p>22 A. Oh, God, that was eight years ago, so</p> <p>23 sometime in 2012, I believe.</p> <p>24 Q. And just to clarify, was the loan</p> <p>25 agreement between you personally and Mr.</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. Okay. And did you have to sign a</p> <p>2 personal guaranty for that agreement?</p> <p>3 A. I'm not -- you know, it's -- I'm not</p> <p>4 really sure if I did.</p> <p>5 Q. Did you have to put up any property</p> <p>6 as collateral or security for that deal?</p> <p>7 A. No, because it's a sale, it's a sale</p> <p>8 of the practice.</p> <p>9 Q. Sure. Did you sign a promissory note</p> <p>10 in connection with that deal?</p> <p>11 A. I don't think so. I did not -- I do</p> <p>12 not recall.</p> <p>13 Q. Okay. Was there any security -- I</p> <p>14 guess if you don't recall if there was a</p> <p>15 promissory note you don't recall whether there</p> <p>16 was any security pledged as part of the</p> <p>17 promissory note.</p> <p>18 A. Yeah, I don't think so.</p> <p>19 Q. You mentioned earlier that you had</p> <p>20 used a portion of the \$5 million initial</p> <p>21 payment to pay the debts of IPM, what debts do</p> <p>22 you recall at that time?</p> <p>23 A. We have debts from medical supplies,</p> <p>24 we have debts from -- I think we still have</p> <p>25 taxes to pay and we had back payments to our</p>
<p style="text-align: right;">Page 26</p> <p>1 Hughes or were there business entities that</p> <p>2 were parties to this agreement?</p> <p>3 A. You're referring to it as a loan</p> <p>4 agreement but it is actually a sale agreement.</p> <p>5 Q. Okay. Thank you. I'll call it --</p> <p>6 yes, thank you, a sales agreement. Who are</p> <p>7 the parties to sales agreement?</p> <p>8 A. Yes, myself and Mr. McHugh -- I'm</p> <p>9 sorry, just myself and Mr. Hughes.</p> <p>10 Q. Was it -- was Mr. Hughes entering</p> <p>11 into the agreement under the name Universal</p> <p>12 Pain Management; does that sound familiar?</p> <p>13 A. Yes.</p> <p>14 Q. What is Universal Pain Management?</p> <p>15 A. That was supposed to be the entity</p> <p>16 that he claims to own like 21 clinics, you</p> <p>17 know, and it's an entity that was acquiring</p> <p>18 pain practices all over the country,</p> <p>19 primarily, I believe, in the northeast and the</p> <p>20 western state, I believe.</p> <p>21 Q. Okay. So the sales agreement was</p> <p>22 between UPM and was it between IPM and Ares as</p> <p>23 well, as the sellers?</p> <p>24 A. I believe it's between IPM and the</p> <p>25 Universal Pain.</p>	<p style="text-align: right;">Page 28</p> <p>1 employees. So almost all of the money were</p> <p>2 used, really, actually, to do that, as well as</p> <p>3 for practice expansion.</p> <p>4 Q. What amount, if any, was put towards</p> <p>5 practice expansion?</p> <p>6 A. Travis Guthrie handled the finances</p> <p>7 so I really don't have specific numbers.</p> <p>8 Q. And do you recall whether out of that</p> <p>9 initial five million you were able to satisfy</p> <p>10 IPM's debts to medical suppliers?</p> <p>11 A. Yes.</p> <p>12 Q. How about the taxes, were you able to</p> <p>13 pay those taxes?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall about when you paid off</p> <p>16 the taxes that IPM owed at that time?</p> <p>17 A. I don't. As I mentioned, Guthrie</p> <p>18 handled anything related to finances. All I</p> <p>19 wanted to do is see patients, but -- and I</p> <p>20 leave to my, unfortunately, to my COO to</p> <p>21 handle everything else.</p> <p>22 Q. Is it fair to say you were not</p> <p>23 involved in, I guess, the nitty-gritty of the</p> <p>24 financial expenditures of the practice?</p> <p>25 A. No, I don't even have access to our</p>

7 (Pages 25 to 28)

<p style="text-align: right;">Page 33</p> <p>1 inquired what kind of testing they do, and  2 they said they're state of the art drug  3 testing. And I said, okay, we'll give you a  4 try, we don't have -- we don't do exclusivity,  5 we send drug testing to quite a few companies,  6 at least three or four companies. And then  7 that's how I come to introduce to PCLS. And  8 then subsequently I got to be introduced to  9 Mr. McHugh.  10 Q. Do you remember when that meeting  11 with the sales rep took place?  12 A. I'm bad with dates. It must be  13 sometime in 2013 or something like that.  14 Q. And just to confirm, this was a PCLS  15 sales rep; correct?  16 A. That is correct.  17 Q. And do you recall his or her name?  18 A. His name is Chris Kemp, K-E-M-P.  19 Q. And do you recall the first time you  20 met Mr. McHugh?  21 A. Not really. It's seven years ago,  22 eight years ago.  23 Q. Are you trying to say he didn't make  24 a big impression here?  25 A. Well, no, he did, but I'm just not</p>	<p style="text-align: right;">Page 35</p> <p>1 A. Rock Hill, South Carolina -- or North  2 Carolina.  3 Q. South -- South Carolina.  4 A. Oh, South Carolina.  5 Q. Right south of the border.  6 A. And I did -- yeah, and then I did  7 went and visited them. Then that's where I  8 clearly specifically sat down and talked to  9 Mr. McHugh.  10 Q. But you may or may not have met with  11 him or spoken with him prior to your visit to  12 Rock Hill?  13 A. Spoken to him, I may have spoken to  14 him, I just don't know if it's in person or in  15 the telephone.  16 Q. Sure. Who invited you to visit the  17 lab facility in Rock Hill?  18 A. The invitation was conveyed to me  19 through Chris Kemp. I believe he arranged the  20 visit.  21 Q. And did Mr. Kemp arrange the  22 logistics related to the visit, such as  23 airfare, hotel if you stayed overnight, that  24 type of thing?  25 A. Yes.</p>
<p style="text-align: right;">Page 34</p> <p>1 very good with dates.  2 Q. Understood. Date notwithstanding,  3 when you met Mr. McHugh what was your  4 understanding of his role with PCLS?  5 A. I know that he is one of the key  6 people at PCLS. What specifically was his  7 role, I'm not really know. Well, I know he's  8 one of the owners.  9 Q. Okay. And when you say "key people  10 in PCSL," tell us a little bit more about what  11 you mean by that.  12 A. Well, he is -- he is basically one of  13 the people behind PCLS and that's as far as I  14 know, you know, that's what it is.  15 Q. Do you know the names of any of the  16 other key people at PCLS?  17 A. No.  18 Q. Do you recall if Mr. McHugh came to  19 meet you at your practice in Jacksonville?  20 A. Vaguely.  21 Q. You think he did come to your  22 practice or did not come to your practice?  23 A. I am not sure but I was invited to  24 visit the PCLS facility in Rockfort.  25 Q. Rock Hill?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. And did -- do you know if PCLS paid  2 for that visit?  3 A. I presume that they did.  4 Q. You don't recall you or IPM paying  5 for expenses related to that trip?  6 A. No.  7 Q. How long were you visiting with the  8 lab on that first time?  9 A. Just as a day. It was the first and  10 only time I visited the lab.  11 Q. What did you do during your visit?  12 A. They give me a tour of the facility  13 and then I sat down with their scientists and  14 explained to me the science behind the  15 testing, why they are the state of the art of  16 drug testing and their accuracy, sensitively,  17 etcetera, it's all a legitimate scientific  18 visit.  19 Q. And if you recall during that visit  20 what -- what was the nature of the products or  21 services that PCLS was offering in terms of  22 toxicology testing?  23 A. Pure drug testing, quantitative drug  24 testing.  25 Q. Quantitative or confirmation testing?</p>

1 A. I don't -- I could not recall the  
2 specific dates, but I meet with Mr. Kumar  
3 several times.

4 Q. What were your meetings with  
5 Mr. Kumar about?

6 A. The -- at that time we were  
7 discussing about -- about how to better  
8 monitor patients and he explained to me the  
9 way -- he basically help us, help guide us on  
10 how to better control, you know, the flow of  
11 information from -- for the patient, as well  
12 as help us potentially help improve our  
13 business.

14 Q. Did Mr. Kumar ever meet with you at  
15 your practice in Jacksonville?

16 A. Yes.

17 Q. About how many times do you think?

18 A. I cannot recall that.

19 Q. At some point did you enter into a  
20 loan agreement with one of Mr. McHugh's  
21 companies called Silent Storm Holdings?

22 A. Yes.

23 Q. How did that transaction come about?

24 A. Well, I explained to Mr. McHugh my  
25 predicament with Mr. Hughes and that

1 A. And Mr. McHugh told me that he may be  
2 able to, you know, he will consider doing a  
3 business loan with the practice, and that's  
4 how the loan with Mr. McHugh come about  
5 through Silent Storm.

6 Q. Was Mr. Guthrie involved in this  
7 transaction?

8 A. He is in the thick of it. He was the  
9 one, actually, dealing primarily with  
10 Mr. McHugh.

11 Q. Can you give us some more detail  
12 about that?

13 A. Well, the -- the negotiation and the  
14 particulars, what was put in the contract was  
15 all negotiated by Travis Guthrie. I was only  
16 given the final document to sign.

17 Q. You mentioned earlier that I think  
18 you were having some trouble recalling dates,  
19 including the time frame of these discussions  
20 with Mr. McHugh, correct?

21 A. Yes.

22 Q. I'm going to show you a document and  
23 I'll ask you to review it and then we can talk  
24 a little bit about that.

25 Hold on one second. I've done this

1 Mr. Hughes was threatening, really, legal  
2 actions that could harm IPM and I'm looking  
3 for a way to repay Mr. Hughes, and that's  
4 when, you know, Phil -- I mean Mr. McHugh and  
5 I developed some sort of a professional  
6 relationship and he offered or maybe I asked  
7 if he could help me with this bit of problem  
8 with Mr. Hughes.

9 Q. And do you recall when you first  
10 discussed your problem with Mr. Hughes with  
11 Mr. McHugh?

12 A. Maybe sometime in 2013. I'm not  
13 really sure. Again, I'm not very good with  
14 dates.

15 Q. Do you recall if that was an  
16 in-person conversation or something you may  
17 have had with him over the phone?

18 A. I'm not sure. Maybe it's an  
19 in-person conversation.

20 Q. Okay. And I think you mentioned that  
21 you may have asked him for help, do you recall  
22 specifically what you may have asked him for?

23 A. That I'm looking for funding so that  
24 I can get off -- Mr. Hughes off my back.

25 Q. And what happened next?

1 before but it'll take me just...

2 This document, for identification  
3 purposes, is Bates Numbered USA-182326.

4 And Dr. Florete, assuming all goes  
5 well, I'm going to be able to share this with  
6 you and I believe give you the ability to  
7 control this screen so you can take a look at  
8 this document.

9 Please let me know if that works,  
10 Dr. Florete.

11 You should be able to scroll up and  
12 read that.

13 A. I'm not able to scroll this.

14 Q. Okay. You know what --

15 A. I think it's affixed with Travis  
16 Guthrie, chief operating officer's name on it.

17 Q. Gotcha. I'm going to do it one more  
18 time. I will maintain control of the document  
19 and I think I should it been able to scroll  
20 for you.

21 Okay. There we go. Can you see  
22 that?

23 A. Yes.

24 Q. Okay.

25 A. It says 2013, okay.

<p style="text-align: right;">Page 53</p> <p>1 note. The practice was earning enough money  2 to be able to pay the loan, but I -- at that  3 time I have no idea why we were not be able to  4 pay the promissory note and only the recent  5 events did I realize that the reason being  6 that a lot of the money being earned by the  7 practice is diverted somewhere else.  8 Q. When did you first learn that IPM was  9 not meeting its obligation under the  10 October 2013 loan, repayment obligations?  11 A. I believe we got a notice from  12 Mr. McHugh's lawyer that we are not paying the  13 monthly amount as stated and I instructed  14 Guthrie to make sure that we do so. Maybe  15 sometime in 2014 or 2013, I'm not really sure.  16 Q. Had you received a notice to that  17 affect after you had already done a loan  18 modification with Mr. McHugh?  19 A. Yes.  20 Q. So prior -- let's -- I'll back up and  21 I'll try to ask a better question.  22 Before any loan modifications,  23 operating under this original loan agreement,  24 do you know whether all payments were made  25 under this original loan obligation?</p>	<p style="text-align: right;">Page 55</p> <p>1 BY MS. ARMSTRONG:  2 Q. You eventually entered into a loan  3 modification with Mr. McHugh; is that correct?  4 A. Yes.  5 Q. What were the circumstances giving  6 rise to that modification?  7 A. I'm not really sure. I really don't  8 know why we increased the loan.  9 Q. Do you know how much you increased  10 the loan?  11 A. I think we went up to \$2 million.  12 Q. Do you recall anything about the  13 terms of the modified loan?  14 A. No, because, as I mentioned, this was  15 all handled through Guthrie.  16 Q. Would you and Guthrie meet to discuss  17 financial issues of IPM on any sort of regular  18 basis?  19 A. Well, I'm getting -- I was getting a  20 profit and loss report and they always looked  21 good and, you know, he will show it to me and  22 it showed how much we owed and how much we  23 earn and how much we paid, in general. You  24 know, I do not really recall the specifics of  25 it, but I do get quarterly reports from him.</p>
<p style="text-align: right;">Page 54</p> <p>1 A. No, because Guthrie is handling all  2 the financial transactions of the practice.  3 Q. Do you know now that the payments  4 were not all made?  5 MR. CAUDILL: Objection to form.  6 You can answer, Dr. Florete.  7 THE WITNESS: Specific to this  8 promissory note, I'm not really sure.  9 BY MS. ARMSTRONG:  10 Q. Do you know anything about payments  11 that were made specific to this promissory  12 note?  13 MR. CAUDILL: Objection to form.  14 THE WITNESS: No.  15 MR. CAUDILL: Dr. Florete, you can  16 answer.  17 THE WITNESS: No.  18 BY MS. ARMSTRONG:  19 Q. Okay. So sitting here today you  20 can't tell us what was paid under the original  21 promissory note?  22 MR. CAUDILL: Objection, he's  23 answered this question three times.  24 Dr. Florete, you can answer.  25 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. You said earlier that you were  2 looking for funding sources to get out from  3 under Mr. Hughes and that deal with UPM; is  4 that correct?  5 A. Yes.  6 Q. And that's how this loan with  7 Mr. McHugh came about, correct?  8 A. Yes.  9 Q. Prior to negotiating this deal with  10 Mr. McHugh had you evaluated any other funding  11 sources?  12 A. I don't think so.  13 Q. And what I mean by that is had you  14 gone to a bank to attempt to obtain a loan?  15 A. No.  16 Q. Had you gone to any other individuals  17 or companies in an attempt to obtain funding?  18 A. No.  19 Q. Were you a personal guarantor of the  20 original loan in 2013?  21 A. I'm not sure.  22 Q. Do you know if you ever signed a  23 guaranty after you all did the loan  24 modification?  25 A. I believe I did.</p>

14 (Pages 53 to 56)



<p style="text-align: right;">Page 57</p> <p>1 Q. Do you recall when that loan 2 modification -- first loan modification 3 occurred? 4 A. Specific date, no. I believe it was 5 in sometime in 2014. 6 Q. After the loan was modified did IPM 7 start making regular payment towards its 8 obligations under the loan? 9 A. Travis told me that he was making 10 payments. I do not think it's regular. 11 Q. You eventually, as well as IPM and 12 Ares, were named in a lawsuit brought by 13 Silent Storm's holdings in Florida state 14 court; is that correct? 15 A. That is correct. 16 Q. What was that lawsuit about? 17 A. Well, this is after the fact that I 18 found out that Travis was not actually paying 19 the loan in a timely manner to Mr. McHugh in 20 that we've accumulated a significant amount of 21 debt because of the interest, and since Ares 22 Medical Corporation and IPM already was closed 23 because of an IRS issue, Silent Storm then 24 brought a lawsuit against me since I 25 personally guaranteed the loan.</p>	<p style="text-align: right;">Page 59</p> <p>1 much is outstanding on that judgment? 2 A. Because of the interest accruing, 3 still 2.5 million, I believe. 4 Q. Did you ever discuss your 5 circumstances with Mr. Hughes with Manoj 6 Kumar? 7 A. Yes. 8 Q. Okay. When did you discuss that with 9 Mr. Kumar? 10 A. Probably the similar time that I 11 discussed it with Mr. McHugh, around the 12 timeline. 13 Q. Was Mr. Kumar involved in any of the 14 negotiations for the original loan from Silent 15 Storms in 2013? 16 A. I don't believe so. 17 Q. Did you discuss that 2013 loan with 18 anyone else from PCLS besides Mr. McHugh? 19 A. No. 20 Q. At some point did you stop referring 21 patient samples to PCLS for urine drug 22 testing? 23 A. I'm not really sure, because we 24 continued sending samples. I don't handle 25 those things, so I am not really sure if we</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. And how did that lawsuit eventually 2 resolve, what happened? 3 A. Well, I have a judgment against me. 4 Q. Okay. When was a judgment entered 5 against you, if you recall? 6 A. Sometime last year, I believe. 7 Q. And against you personally? 8 A. Yes. 9 Q. Were there any judgments entered 10 against IPM or Ares? 11 A. Those entities are already shut down. 12 Q. And do you recall the amount of the 13 judgment entered against you? 14 A. It's \$2.5 million plus, and \$59,000 15 in lawyer's fee for his lawyer. 16 Q. Have you made any payments towards 17 satisfying that judgment? 18 A. Well, Silent Storm garnished my cars, 19 my boats, some of my bank accounts, my 20 buildings, some of the real estate properties 21 that I owe -- that I own I mean. 22 Q. Sure. Has that judgment been 23 satisfied, to your knowledge? 24 A. No. 25 Q. Do you have an estimate as to how</p>	<p style="text-align: right;">Page 60</p> <p>1 stopped sending PCLS samples or we stopped -- 2 I don't know if PCLS stopped operating, I'm 3 not really sure. But we -- I know that we 4 continued to send -- it's one of the labs we 5 sent samples to, so. 6 Q. Was your role in selecting the labs 7 where the samples were sent for IPM patients? 8 A. Hardly any. They brought to my 9 attention there's a lab that wants us to try 10 their testing, I said go ahead. Sometimes I'm 11 not being asked, you know, my primary -- 12 again, primarily Guthrie will tell us what to 13 -- what companies we were going to use or my 14 policy is, as long a third-party payor will 15 pay for it, if it's within their license or 16 approved companies to deal business with, go 17 ahead and send the samples. 18 Q. And specific to PCLS, did you make 19 the decision to start sending samples there or 20 did somebody else make that decision? 21 A. Actually I did that as a goodwill to 22 help my -- my -- or the friend of my office 23 administrator's daughter or son, you know, 24 send the samples as long -- I told him, as 25 long as you are in the network I have no issue</p>

15 (Pages 57 to 60)

1 And then I'm not -- for sure people  
2 are sending me email through that address but  
3 I cannot read it, I cannot access it, because  
4 Guthrie was the administrator.

5 So, yeah, and more recently we -- a  
6 private investigator is helping us gather  
7 significant evidence and I'm actually meeting  
8 him this Sunday, so yeah.

9 Q. Okay. When is the last time you've  
10 spoken with Mr. McHugh?

11 A. Off the top of my head, several  
12 months ago.

13 Q. Do you recall what the conversation  
14 was about?

15 A. Oh, this is with regards to what I  
16 owe Silent Storm and, you know, and in what  
17 ways does we'll be able to mitigate what I  
18 owe, maybe if I go after -- they go after  
19 Travis Guthrie and then maybe I don't have to  
20 pay the whole caboodle. And plus I forget to  
21 mention, when IPM shut down I created an  
22 entity called Integrated Pain Services, which  
23 I handed over to a woman which actually was  
24 introduced to me by Travis, to run IPM during  
25 the last two years. And so -- and I was gone

1 A. Well, not yet.

2 Q. It's something you're still working  
3 on?

4 A. I'm hoping that we will.

5 Q. Sure. Do you recall when that last  
6 conversation was, you said several months ago?

7 A. Yeah, several months ago. I can't  
8 recall the specific date.

9 Q. Have you discussed this litigation,  
10 the litigation between the United States and  
11 Mr. McHugh, with Mr. McHugh?

12 A. No, no.

13 Q. Have you discussed this deposition  
14 with Mr. McHugh?

15 A. No.

16 Q. Have you spoken with Mr. McHugh's  
17 counsel before this deposition?

18 A. I don't remember those two gentlemen,  
19 so no.

20 Q. And you and I have never spoken  
21 before today; is that correct?

22 A. Oh, no.

23 Q. One more quick question, you  
24 mentioned earlier that you did not go to any  
25 banks seeking a loan in an effort to resolve

1 for a year, I cannot own the practice because  
2 of the IRS garnishing everything that I have,  
3 that's why I had to go Antigua for a while.  
4 Then when I paid the IRS, I came back and  
5 said, I'm going to take over Integrated Pain  
6 Services, you know what they told me? You  
7 don't own Integrated Pain Services, it is  
8 ours. I said, but all of the things in there  
9 are mine, all the patients are mine. They  
10 said, show us proof of ownership. I can't. I  
11 don't have any document to show ownership.  
12 And IPS was created with their name in it.  
13 And so I said, well, at least I want to get my  
14 stuff back, so they told me, okay, pick them  
15 at the office, I went the office, you know  
16 what, there were boxes outside the office. I  
17 wasn't even allowed to get into the office.  
18 That's why I created this entirely new  
19 practice, Orles Pain Management. I started  
20 like I'm starting the same like I started  
21 25 years ago, so there you go.

22 Q. Thank you for that.

23 Were you and Mr. McHugh ever able to  
24 work out a resolution to mitigate what amounts  
25 are owed to Silent Storm?

1 your financial issues with Mr. Hughes, can you  
2 tell us why not?

3 A. As I said, I don't handle the  
4 finances. Travis handles everything, you  
5 know, all he want me to do is see patients and  
6 he said I'll take care of the business side of  
7 it, so I trusted the guy, he worked with me  
8 for a long time. And the thought even didn't  
9 enter my mind, to go into the bank.

10 MS. ARMSTRONG: All right. I think  
11 that's everything I have. Thank you so  
12 much, Dr. Florete.

13 MR. CAUDILL: Dr. Florete, I do have  
14 a couple of follow-ups. I apologize, I'll  
15 try --

16 THE WITNESS: Oh, no problem.

17 MR. CAUDILL: I'll try to be brief.

18 THE WITNESS: We set this for four  
19 hours, so you can go on asking me  
20 questions.

21 MR. CAUDILL: Great. Well, I won't  
22 keep you here for --


23 MS. ARMSTRONG: You'll be sorry you  
24 said that, Dr. Florete.

25 RECROSS-EXAMINATION

CERTIFICATE  
THE STATE OF FLORIDA,  
COUNTY OF MIAMI-DADE

I hereby certify that I have read the  
foregoing deposition by me given, and that the  
statements contained herein are true and  
correct to the best of my knowledge and  
belief, with the exception of any corrections  
or notations made on the errata sheet, if one  
was executed.

Dated this \_\_\_\_ day of \_\_\_, 2020

  
(Deponent's name)





IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL FILE NO. 3:17-CV-37

_____	)	
UNITED STATES OF AMERICA, ex rel.	)	
TARYN HARTNETT and DANA SCHOCHED,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	DEPOSITION OF JOHN GROVE
	)	
PHYSICIANS CHOICE LABORATORY	)	
SERVICES, LLC, DOUGLAS SMITH,	)	
PHILIP MCHUGH AND MANOJ KUMAR,	)	
	)	
Defendants.	)	
_____	)	

On Thursday, July 30, 2020, commencing at 9:00 a.m., the deposition of John Grove was taken on behalf of the Plaintiffs at the offices of United States Department of Justice, 227 West Trade Street, Suite 1650, Charlotte, North Carolina, and was attended by Counsel as follows:

APPEARANCES:

KATHERINE T. ARMSTRONG, ESQ.  
SETH JOHNSON, ESQ.  
Assistant United States Attorneys  
United States Department of Justice  
227 West Trade Street, Suite 1650  
Charlotte, North Carolina 28202  
on behalf of the Plaintiffs

BO B. CAUDILL, ESQ.  
Weaver Bennett & Bland, PA  
196 North Trade Street  
Matthews, North Carolina 28105  
on behalf of the Defendant Philip McHugh

ATTENDING: Philip McHugh, Cathleen Hollowell

REPORTED BY: MAI-BETH KETCH, CCR, CVR-M

ASHEVILLE REPORTING SERVICE

1 in the previous question. But I don't  
 2 remember the name of that program.  
 3 Q Got you. So now looking at this, if it  
 4 refreshes your memory, how was this desktop  
 5 analyzer pitched to the customer accounts or  
 6 potential customer accounts?  
 7 A Yeah. So in a previous question I had told  
 8 you that the previous cup method, those  
 9 reimbursements were cut significantly from a  
 10 physician-office level. And they were now, it  
 11 looks like, that \$20 figure, whereas before,  
 12 depending on the state, they were probably  
 13 much higher. And that's when these analyzer  
 14 discussions were more frequent because, with  
 15 that type of program, they could -- with the  
 16 proper equipment and all that kind of stuff,  
 17 could get back to similar type reimbursements  
 18 as before.  
 19 Q Did that change to reimbursement from point-  
 20 of-care testing occur in the context of  
 21 Medicare, or was it universal to private pay  
 22 insurance carriers, etcetera?  
 23 A I remember it -- I remember it as Medicare,  
 24 and then some of the private payers following  
 25 suit with that.

1 with anyone at PCLS about the use of the  
 2 analyzer in-house lab program to generate more  
 3 physician referrals to the company?  
 4 A I don't -- I don't remember those  
 5 conversations. You know, looking back, you  
 6 know, probably helping some of these  
 7 physicians with that program or an  
 8 introduction maybe, you know, would help us  
 9 get confirmatory-type business. I just don't  
 10 -- I don't remember those discussions back  
 11 then. I don't.  
 12 Q Do you remember any discussions internally  
 13 about the purpose of promoting these desktop  
 14 analyzers or in-house lab services to  
 15 customers or potential customers?  
 16 A Can you say it again? I'm sorry.  
 17 Q Sure. And it's a very similar question. I'll  
 18 try and ask it another way. Do you remember  
 19 any conversations internally about the purpose  
 20 of offering desktop analyzers or in-house lab  
 21 services to existing or perspective accounts?  
 22 BY MR. CAUDILL:  
 23 Objection. You can answer.  
 24 BY THE DEPONENT:  
 25 I don't remember specific conversations. But

1 Q Do you remember if PCLS ever put a hard stop  
 2 to the desktop analyzer in-house lab program?  
 3 BY MR. CAUDILL:  
 4 Objection. You can answer.  
 5 BY THE DEPONENT:  
 6 I don't remember. I remember the hard stop,  
 7 in my mind, is when we -- we started to --  
 8 things started to change in 2012. I don't  
 9 remember if that was directed or whatnot, but  
 10 there was a point that we just -- you know,  
 11 from side of things it wasn't discussed  
 12 anymore. I wasn't involved in those types of  
 13 discussions.  
 14 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 15 Q So you weren't involved in discussions at a  
 16 decision level, as to the analyzer program; is  
 17 that correct?  
 18 A I don't recall. I mean, what I was saying to  
 19 you is I remember that this was a period of  
 20 time that, in my mind, ended in around -- when  
 21 we started to kind of change as a sales  
 22 organization, new people coming in and such.  
 23 Q I was looking through my notes for a second.  
 24 A You bet. Go ahead.  
 25 Q Were you ever a party to any conversations

1 my understanding, you know, is that it, you  
 2 know, could help us get the business that we  
 3 wanted.  
 4 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 5 Q Who at PCLS, during the time you were offering  
 6 the analyzer services, would have been  
 7 responsible for making that decision?  
 8 BY MR. CAUDILL:  
 9 Objection. You can answer.  
 10 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 11 Q Do you understand the question?  
 12 BY MR. CAUDILL:  
 13 Objection. You can answer.  
 14 BY THE DEPONENT:  
 15 Yeah, it would have been ownership.  
 16 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 17 Q And who on the ownership team would have been  
 18 involved in decisions relating to the analyzer  
 19 program?  
 20 BY MR. CAUDILL:  
 21 Objection. You can answer.  
 22 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 23 Q You understand the question?  
 24 A I do.  
 25 BY MR. CAUDILL:

1           Objection to that question also. You can  
2           answer.  
3   BY THE DEPONENT:  
4           It would have been -- it would have been, you  
5           know, Phil and Marcus at that time.  
6   DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
7   Q   Do you recall anything specific about Phil  
8       McHugh's involvement in the analyzer program?  
9   BY MR. CAUDILL:  
10          Objection. You can answer. And just to be  
11          clear, my objection is to the use of the  
12          phrase "analyzer program." I'm not sure what  
13          that refers to.  
14   DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
15   Q   Do you understand what I mean when I'm saying  
16       "analyzer program"?  
17   A   I do.  
18   Q   We can go back and define it. Analyzer  
19       program means PCLS offering to customer  
20       accounts or prospective accounts to assist  
21       with the setup of ---  
22   A   Sure.  
23   Q   --- in-office analyzers; correct?  
24   A   Yeah.  
25   Q   That's what you understood it to mean the

1           when I look specific to this time frame, I  
2           don't remember specific conversations with him  
3           about analyzers.  
4   Q   And I appreciate your clarification of that,  
5       and I'll ask it again a different way. Based  
6       on your independent recollection, do you  
7       recall Manoj Kumar having any involvement in  
8       the analyzer program?  
9   A   Vaguely. And I don't know if it's because of  
10       what has been discussed or whatnot. But I  
11       don't -- I don't remember him too much during  
12       that time frame.  
13   Q   When did Manoj Kumar join PCLS?  
14   A   I don't know the specific -- specific time. I  
15       could speculate, if you'd like.  
16   Q   No need to speculate. That's fine. I  
17       appreciate that.  
18   A   Okay.  
19   Q   At some point Manoj Kumar came to work for  
20       PCLS?  
21   A   Correct.  
22   Q   Do you know how he was brought onboard?  
23   A   I don't. I remember I think he was working  
24       with some facilities in Indiana, and then I  
25       believe he was brought on in a billing -- a

1           entire time we've been talking about this?  
2   A   I understand.  
3   Q   Okay.  
4   A   Can you repeat your question?  
5   Q   Now I've forgotten it. Yes. What was Phil  
6       McHugh's involvement with the desktop analyzer  
7       program.  
8   A   Phil was a big part of sales at that time.  
9       When I think of analyzers and -- you know, I  
10       think of a relationship with that -- as I  
11       mentioned before, the one that comes to mind  
12       the most is the Select Labs out of Greensboro.  
13       And Phil would have been involved in that.  
14       Joe Wiegel would have been involved about --  
15       with that at that -- you know, to some degree,  
16       and probably Marcus.  
17   Q   Was Manoj Kumar involved in desktop analyzers?  
18   A   I believe so, based on some things that you've  
19       mentioned today. But when I think of during  
20       the specific time frame that you're  
21       referencing, I don't envision him in all those  
22       conversations. You later said that with Dr.  
23       Nichols and he did this and that. So  
24       obviously, in my mind, I know that he was --  
25       obviously you're saying he was involved. But

1           billing capacity for PCLS, as I -- that's how  
2           I remember it during that time.  
3   Q   What did you know about Manoj Kumar's  
4       involvement with the medical practice or  
5       practices in Indiana?  
6   A   Not too much. I -- the first I heard of Manoj  
7       was that he was helping to manage -- I  
8       believe, if I recall correctly, to manage some  
9       similar type physician offices in the State of  
10       Indiana.  
11   Q   When you say similar type, are you referring  
12       to pain management practices?  
13   A   I believe so.  
14   Q   Were you involved in the hiring of Manoj  
15       Kumar?  
16   A   No.  
17   Q   Did you have any knowledge or information as  
18       to his role in those pain management practices  
19       in Indiana?  
20   A   No.  
21   Q   Do you recall when you first met him?  
22   A   I don't. I obviously remember meeting him and  
23       having a number of conversations with him over  
24       the year -- year or two and -- but I don't  
25       remember specifically when I met him.

1 significant leaps as well from, maybe 24 to 48  
2 to, you know, perhaps 70, 80, to 115. And I  
3 think my base when I left was 120 maybe.

4 BY MR. CAUDILL:

5 Okay. If you will give me just five minutes,  
6 I'm going to just talk to Phil and we'll come  
7 back, and I'll probably be almost done.

8 BY THE DEPONENT:

9 Okay.

10 (OFF THE RECORD)

11 CROSS-EXAMINATION RESUMED BY MR. CAUDILL:

12 Q Mr. Grove, we're back from a break. I just  
13 have very fast questions for you, I think.

14 A Okay.

15 Q Other than the one time you came here in  
16 December or November of 2017, have you spoken  
17 to any representative of the Government about  
18 this case?

19 A No, I have not.

20 Q Has any representative of the Government  
21 attempted to contact you to speak to you about  
22 this case, other than the time you came here  
23 in December, November of 2017?

24 A No, just a -- just a phone call a few weeks  
25 ago to schedule me for this one.

1 Q Is that the letter and subpoena that was  
2 served on you by my office?

3 A Yes.

4 Q So you're here today pursuant to a subpoena?

5 A Yes.

6 Q And I believe you mentioned you had one phone  
7 call with the Government prior to today to  
8 schedule this. Is that correct?

9 A Yes.

10 Q No substantive conversation about the case or  
11 investigation?

12 A No, just to -- this was early in the month --  
13 to see what would work for me later in the  
14 month.

15 Q I think the first time you and I have ever  
16 spoken was this morning in the lobby where I  
17 found you with Mr. McHugh and Mr. Caudill; is  
18 that right?

19 A That's correct.

20 BY MS. ARMSTRONG:

21 That's all I've got.

22 (PROCEEDINGS CONCLUDED AT APPROXIMATELY 1:29 P.M.  
23 NEITHER COUNSEL NOR THE WITNESS REQUESTED TO READ  
24 AND SIGN THE DEPOSITION.)  
25

1 Q Have you ever been interviewed -- and this is  
2 a little complicated, so stay with me. Have  
3 you ever been interviewed, questioned, or  
4 given a statement to a lawyer about this case,  
5 other than a lawyer that represented you? And  
6 tell me if you need me to ask it again.

7 A Yeah, just ---

8 Q One more time?

9 A --- yeah, one more time.

10 Q Other than a lawyer that represented you, so  
11 not a lawyer that you hired, have you ever  
12 spoken with, been questioned by or interviewed  
13 by a lawyer related to this case?

14 A No. Just my previous session here with Mr.  
15 Ferry.

16 BY MR. CAUDILL:

17 Thank you. Those are all my questions.

18 (GOVERNMENT EXHIBIT NO. 5 MARKED)

19 REDIRECT EXAMINATION BY MS. ARMSTRONG:

20 Q Very briefly, John, I think we'll get you out  
21 of here in the next two minutes, I'm going to  
22 show you what's been marked as Exhibit 5. I  
23 just want to make this part of the record.

24 Does that document look familiar? (Tenders)

25 A (Upon review) Yes.

CERTIFICATE

I, Mai-Beth Ketch, CCR, CVR-M, Court Reporter  
and Notary Public, do hereby certify that the  
foregoing 160 pages are an accurate transcript of  
the deposition of John Grove, taken by me and  
transcribed under my supervision.

I further certify that I am not financially  
interested in the outcome of this action, a  
relative, employee, attorney or counsel of any of  
the parties, nor am I a relative or employee of  
such attorney or counsel.

This is the 20th day of August 2020.

MAI-BETH KETCH, CCR, CVR-M

Notary Public No.: 19981410006

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

UNITED STATES OF AMERICA	)	
ex rel. TARYN HARTNETT,	)	
and DANA SHOCHED,	)	
	)	
Plaintiff,	)	CIVIL FILE NO.
	)	3:17-CV-37
vs.	)	
	)	(CONSOLIDATED WITH
PHYSICIANS CHOICE	)	CIVIL FILE NO.
LABORATORY SERVICES,	)	3:17-CV-46)
DOUGLAS SMITH, PHILIP	)	
McHUGH, and MANOJ KUMAR,	)	
	)	
Defendants.	)	

The deposition of SANKER  
JAYACHANDRAN, M.D., called by  
the Defendant for examination, taken pursuant to  
the Federal Rules of Civil Procedure of the  
United States District Courts pertaining to the  
taking of depositions, taken before DIANE M.  
NULICK, a Notary Public within and for the  
County of Cook, State of Illinois, and a  
Certified Shorthand Reporter of said State, at  
Suite 200, 70 West Hubbard Street, Chicago,  
Illinois, on the 18th day of November, A.D.  
2020, at 10:28 a.m.

<p style="text-align: right;">10</p> <p>1 Q. Great.</p> <p>2 Go ahead and tell us your full</p> <p>3 name, please.</p> <p>4 A. Sanker Jayachandran.</p> <p>5 Q. Dr. Jayachandran, what is your current</p> <p>6 occupation?</p> <p>7 A. I'm a physician.</p> <p>8 Q. What type of physician are you?</p> <p>9 A. I'm a psychiatrist specializing in</p> <p>10 addictions.</p> <p>11 Q. And are you currently working as a</p> <p>12 psychiatrist?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. Where do you work?</p> <p>15 A. I work in Munster, Indiana.</p> <p>16 Q. And do you work at a medical practice?</p> <p>17 A. No. This is my one practice, ma'am.</p> <p>18 Q. What is the name of your practice?</p> <p>19 A. Confidential Care.</p> <p>20 Q. And what type of practice is</p> <p>21 Confidential Care?</p> <p>22 A. It's an outpatient treatment for</p> <p>23 psychiatric and addictions for adult patients.</p> <p>24 Q. How long have you owned Confidential</p> <p>25 Care?</p>	<p style="text-align: right;">12</p> <p>1 initial eval and diagnosis. I have to get some</p> <p>2 kind of an understanding about the patient. And</p> <p>3 then on an ongoing basis, if I do any acute</p> <p>4 care, like a detox, I need a repeated urine test</p> <p>5 for the management purposes, acute care. And</p> <p>6 then the frequency of testing will go down later</p> <p>7 on, after a month, once the patient becomes more</p> <p>8 stable.</p> <p>9 Q. Are you using any labs right now for</p> <p>10 your urine drug testing needs?</p> <p>11 A. Currently, I'm using two labs.</p> <p>12 Q. Can you tell us who those are?</p> <p>13 A. One is Quest Diagnostic. The other one</p> <p>14 is Diagnostic Center of Northwest Indiana</p> <p>15 Region. It's in Northwest Indiana. NWI.</p> <p>16 Diagnostic of NWI.</p> <p>17 Q. And are you using both of those labs</p> <p>18 for confirmation drug testing?</p> <p>19 A. Both initial screening and</p> <p>20 confirmation.</p> <p>21 Q. Can you tell us generally what you mean</p> <p>22 by initial screening?</p> <p>23 A. When a new patient comes, which I stop</p> <p>24 doing after the beginning of the pandemic, I do</p> <p>25 the initial urine test. That's part of the</p>
<p style="text-align: right;">11</p> <p>1 A. Since 1991.</p> <p>2 Q. And do you have any other medical</p> <p>3 providers working at Confidential Care with you?</p> <p>4 A. Dr. Vijay Jayachandran, my wife,</p> <p>5 another psychiatrist working with me.</p> <p>6 Q. And how long has your wife been working</p> <p>7 at Confidential Care with you?</p> <p>8 A. Since 1991.</p> <p>9 Q. You mentioned, I believe, you were</p> <p>10 located in Munster, Indiana.</p> <p>11 Does your practice have any</p> <p>12 other locations?</p> <p>13 A. No other location except currently we</p> <p>14 are providing exclusively the telepsychiatry,</p> <p>15 telemedicine.</p> <p>16 Q. Is that due to the current COVID</p> <p>17 pandemic?</p> <p>18 A. Because of the pandemic, yes.</p> <p>19 Q. Thank you.</p> <p>20 As part of your practice, do</p> <p>21 you use urine drug testing?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. Can you tell us generally why you use</p> <p>24 urine drug testing in your practice?</p> <p>25 A. There are many reasons. One is the</p>	<p style="text-align: right;">13</p> <p>1 diagnosis. So what they report and what report</p> <p>2 I get, if it's different, then I get more</p> <p>3 information from that. So I have to come up</p> <p>4 with a diagnosis and what cause of action I have</p> <p>5 to take, whether I should keep them in the</p> <p>6 outpatient detox and maintenance or whether I</p> <p>7 should refer them to an inpatient setting.</p> <p>8 Q. And for your initial screening, do you</p> <p>9 use a qualitative or quantitative drug test?</p> <p>10 A. Within -- initially, it is</p> <p>11 qualitative -- I need that right away, if</p> <p>12 possible -- and then followed by the</p> <p>13 quantitative testing.</p> <p>14 Q. Can you explain to us briefly what</p> <p>15 qualitative testing means to you?</p> <p>16 A. A qualitative test is either positive</p> <p>17 or negative, yes and no. And then it also --</p> <p>18 sometimes it doesn't pick up some other tests,</p> <p>19 so it may have some false negative results.</p> <p>20 That's one thing.</p> <p>21 Secondly, if it's a positive</p> <p>22 and negative, then I need to know the level of</p> <p>23 drugs in the urine. That's what the</p> <p>24 confirmation is.</p> <p>25 Q. And is confirmation testing another way</p>

<p style="text-align: right;">14</p> <p>1 of describing quantitative testing?</p> <p>2 A. It is to confirm because the</p> <p>3 qualitative testing is not very accurate. It</p> <p>4 may miss some positive test. And, also, it</p> <p>5 doesn't tell me the quantity of substances in</p> <p>6 the urine itself. Then the confirmation tells</p> <p>7 me the -- more of the quantity part of it, which</p> <p>8 would be useful for me for the later serial</p> <p>9 testing because the level is going down or going</p> <p>10 up, so we can measure that as part of the</p> <p>11 treatment.</p> <p>12 Q. And do you have the ability to run</p> <p>13 qualitative tests in your own practice and how?</p> <p>14 A. Well, I -- initially, I didn't have</p> <p>15 that. In 2016, I started, and then I stopped</p> <p>16 again with COVID and everything.</p> <p>17 Q. And I apologize, Doctor. I caught the</p> <p>18 in 2016 you started, but then I was not able to</p> <p>19 get the rest of your answer.</p> <p>20 A. 2016, I started doing some screening</p> <p>21 because -- not all. The majority, I refer them</p> <p>22 out. But later on, we stopped around 2019.</p> <p>23 Q. And did you say you stopped because of</p> <p>24 COVID in 2019?</p> <p>25 A. Because I stopped taking more acutely</p>	<p style="text-align: right;">16</p> <p>1 Q. How did you first become familiar with</p> <p>2 Physicians Choice?</p> <p>3 A. When I started working with addiction</p> <p>4 in 2010 and 2011, we needed a lab to work with.</p> <p>5 And then we were contacted by many laboratory</p> <p>6 services during that time. One of them -- we</p> <p>7 started working with Physicians Choice during</p> <p>8 that time, in 2011.</p> <p>9 Q. Do you recall who from Physicians</p> <p>10 Choice contacted you in 2011?</p> <p>11 A. I don't recall, ma'am.</p> <p>12 Q. And did you set up an account and</p> <p>13 become a customer of Physicians Choice in 2011?</p> <p>14 A. Later on, I believe, in 2012, we</p> <p>15 established an account.</p> <p>16 Q. All right.</p> <p>17 In 2012, when you established</p> <p>18 an account, do you recall who your PCLS sales</p> <p>19 representative was?</p> <p>20 A. No, ma'am.</p> <p>21 Q. Do you know who Manoj Kumar is?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. How do you know Mr. Kumar?</p> <p>24 A. As a rep for Physicians Choice Lab, he</p> <p>25 came to our office. That's how I came to know</p>
<p style="text-align: right;">15</p> <p>1 ill patients in 2019.</p> <p>2 Q. Okay. Thank you.</p> <p>3 A. Because I moved from acute care --</p> <p>4 acute care to more maintenance treatment.</p> <p>5 Q. When you were doing qualitative testing</p> <p>6 in your office, were you using point of care</p> <p>7 testing cups or another method to run your</p> <p>8 tests?</p> <p>9 A. Mainly, the point of care is the</p> <p>10 maintain thing. Until 2016, I did not have</p> <p>11 anything else other than a cup or sometimes a</p> <p>12 strip, like that, one of the two.</p> <p>13 Q. Okay.</p> <p>14 At any point in your practice,</p> <p>15 did you use desktop analyzer equipment in your</p> <p>16 office to run qualitative drug testing?</p> <p>17 A. Later on, after 2016, I started that.</p> <p>18 Q. Have you heard of a lab called,</p> <p>19 Physicians Choice Laboratory Services?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. And as we talk today, I may refer to it</p> <p>22 as Physicians Choice or PCLS, and will you know</p> <p>23 I'm referring to Physicians Choice Laboratory</p> <p>24 Services?</p> <p>25 A. Yes, ma'am.</p>	<p style="text-align: right;">17</p> <p>1 him.</p> <p>2 Q. And when did Mr. Kumar first come to</p> <p>3 your office?</p> <p>4 A. I believe he came in 2014.</p> <p>5 Q. Is it possible that Mr. Kumar was your</p> <p>6 PCLS sales rep back in 2012 when you signed up</p> <p>7 with the company?</p> <p>8 MR. CAUDILL: Object to form. You</p> <p>9 can answer.</p> <p>10 That was -- that was me</p> <p>11 objecting to the form.</p> <p>12 BY MS. ARMSTRONG:</p> <p>13 Q. You can answer, Doctor.</p> <p>14 A. No, ma'am.</p> <p>15 Q. When -- let me start again.</p> <p>16 How did the meeting with Mr.</p> <p>17 Kumar at your office in 2014 come about?</p> <p>18 A. Can you clarify the question?</p> <p>19 Q. Sure.</p> <p>20 You mentioned earlier that in</p> <p>21 2014 Mr. Kumar came to your office. And the</p> <p>22 question is: How did that meeting come about?</p> <p>23 A. Like any representative from other lab</p> <p>24 services, he came to our office, and then he</p> <p>25 talked to me in-between patients. And that's</p>



<p style="text-align: right;">18</p> <p>1 the way we started.</p> <p>2 <b>Q. Do you recall anything that you</b></p> <p>3 <b>discussed with Mr. Kumar during that first</b></p> <p>4 <b>meeting in 2014?</b></p> <p>5 A. I don't, ma'am.</p> <p>6 <b>Q. At the time that Mr. Kumar met with you</b></p> <p>7 <b>in 2014, were you using Physicians Choice for</b></p> <p>8 <b>urine drug testing?</b></p> <p>9 A. I was using Physicians Choice to some</p> <p>10 extent in previous years also, 2012 and 2013 and</p> <p>11 also 2014.</p> <p>12 <b>Q. In 2012, other than PCLS, were you</b></p> <p>13 <b>using any other labs for urine drug testing?</b></p> <p>14 A. I have other labs also. I wanted to</p> <p>15 restrict the number of labs to two or three</p> <p>16 because of difficulty in managing many labs, so</p> <p>17 I was using other labs.</p> <p>18 <b>Q. Okay.</b></p> <p>19 <b>What other labs do you recall</b></p> <p>20 <b>using in 2012?</b></p> <p>21 A. I remember Millennium Lab. I remember</p> <p>22 Medstar. And then I remember other ones I</p> <p>23 tried, Aegis, A-e-g-i-s.</p> <p>24 <b>Q. And in 2013, what other labs do you</b></p> <p>25 <b>recall using for urine drug testing?</b></p>	<p style="text-align: right;">20</p> <p>1 <b>purposes of today?</b></p> <p>2 A. The exhibit I received yesterday, I</p> <p>3 reviewed that, and -- and those are the main --</p> <p>4 <b>Q. I'm sorry. Go ahead.</b></p> <p>5 A. Those are the main thing I reviewed at</p> <p>6 this point.</p> <p>7 <b>Q. When you say the main thing you</b></p> <p>8 <b>reviewed, did you review anything in addition to</b></p> <p>9 <b>those exhibits in order to prepare for today?</b></p> <p>10 A. I was trying to recollect what labs I</p> <p>11 was using, and then these are the names I came</p> <p>12 up with from my memory. Millennium. Medstar.</p> <p>13 One more lab I remember is Soft Landing. Aegis.</p> <p>14 These are the labs I remember.</p> <p>15 <b>Q. Other than Mr. Kumar, have you ever met</b></p> <p>16 <b>with anyone else affiliated with PCLS?</b></p> <p>17 A. No, ma'am. That I don't recall.</p> <p>18</p> <p>19 (WHEREUPON, the document marked</p> <p>20 Jayachandran Deposition Exhibit</p> <p>21 4 for identification was</p> <p>22 tendered to the deponent.)</p> <p>23</p> <p>24 BY MS. ARMSTRONG:</p> <p>25 <b>Q. I am going to ask you to look at a</b></p>
<p style="text-align: right;">19</p> <p>1 A. I might have used other labs, but I</p> <p>2 don't have the full memory at this point, ma'am.</p> <p>3 <b>Q. You stated that you recalled using PCLS</b></p> <p>4 <b>in 2013. What is that recollection based on?</b></p> <p>5 MR. CAUDILL: Object to form.</p> <p>6 You can answer.</p> <p>7 THE WITNESS: It's based on my memory</p> <p>8 only at this point.</p> <p>9 BY MS. ARMSTRONG:</p> <p>10 <b>Q. Did you review any documents such as</b></p> <p>11 <b>patient files or order forms to determine when</b></p> <p>12 <b>you made referrals to PCLS?</b></p> <p>13 A. Not at this point. I used to have</p> <p>14 those records in the past.</p> <p>15 <b>Q. For purposes of this deposition today,</b></p> <p>16 <b>though, I think the question is: Did you review</b></p> <p>17 <b>any files or documents to refresh your memory as</b></p> <p>18 <b>to when you were referring to PCLS?</b></p> <p>19 MR. CAUDILL: Object to form.</p> <p>20 You can answer.</p> <p>21 BY MS. ARMSTRONG:</p> <p>22 <b>Q. You can answer, sir.</b></p> <p>23 A. I reviewed some of the records, yes,</p> <p>24 ma'am.</p> <p>25 <b>Q. What records did you review today for</b></p>	<p style="text-align: right;">21</p> <p>1 <b>document, and I apologize. I don't know what's</b></p> <p>2 <b>the -- what number I labeled it as when I sent</b></p> <p>3 <b>it out yesterday because I'm not on my computer,</b></p> <p>4 <b>but it is a Physicians Choice Laboratory</b></p> <p>5 <b>Services provider acknowledgment and consent.</b></p> <p>6 <b>Do you have that in front of</b></p> <p>7 <b>you?</b></p> <p>8 A. I'm going through that, ma'am. One</p> <p>9 moment. I'll get to it.</p> <p>10 <b>Q. Thank you. I appreciate that.</b></p> <p>11 A. Yes.</p> <p>12 MR. CAUDILL: Are you asking about</p> <p>13 the PAF?</p> <p>14 MS. ARMSTRONG: Correct, Bo. Thanks.</p> <p>15 MR. CAUDILL: Exhibit 4.</p> <p>16 MS. ARMSTRONG: Okay.</p> <p>17 THE WITNESS: Exhibit 4?</p> <p>18 MS. ARMSTRONG: Thank you.</p> <p>19 BY MS. ARMSTRONG:</p> <p>20 <b>Q. Do you have it in front of you, Doctor?</b></p> <p>21 A. Yes, ma'am. I have Exhibit 4.</p> <p>22 <b>Q. Great. Thank you.</b></p> <p>23 <b>And are you familiar with this</b></p> <p>24 <b>document?</b></p> <p>25 A. I saw that yesterday, ma'am.</p>



<p style="text-align: right;">22</p> <p>1 Q. Have you seen it at any time before</p> <p>2 yesterday morning?</p> <p>3 A. It's from my recollection. I might</p> <p>4 have seen this before.</p> <p>5 Q. Is that your signature at the bottom of</p> <p>6 the document?</p> <p>7 A. That is my signature, yes, ma'am.</p> <p>8 Q. Do you recall when you filled out this</p> <p>9 form?</p> <p>10 A. I don't know when I filled this form</p> <p>11 because -- I'm trying to recollect. I don't</p> <p>12 remember when I did this.</p> <p>13 Q. Okay.</p> <p>14 I see what looks like a fax</p> <p>15 machine timestamp at the time top of the</p> <p>16 document that reads May 29 of 2012.</p> <p>17 Do you see that notation?</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Does that give you any indication as to</p> <p>20 when you signed this document?</p> <p>21 A. From the date at the bottom, May 29,</p> <p>22 and the date stamp at the top, it looks like</p> <p>23 it's May 29, 2012.</p> <p>24 Q. If you will flip to page two of this</p> <p>25 document, please, on the top right corner,</p>	<p style="text-align: right;">24</p> <p>1 (WHEREUPON, the document marked</p> <p>2 Jayachandran Deposition Exhibit</p> <p>3 1 for identification was</p> <p>4 tendered to the deponent.)</p> <p>5</p> <p>6 BY MS. ARMSTRONG:</p> <p>7 Q. Okay.</p> <p>8 And let's -- let's take a look</p> <p>9 at a document I believe you reviewed. It's the</p> <p>10 promissory note.</p> <p>11 Bo, would you mind sharing with</p> <p>12 us what exhibit number that is?</p> <p>13 MR. CAUDILL: It is Exhibit 1.</p> <p>14 MS. ARMSTRONG: Thank you.</p> <p>15 BY MS. ARMSTRONG:</p> <p>16 Q. Doctor, if you'll take a look at</p> <p>17 Exhibit 1, please.</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. Is this the document you reviewed in</p> <p>20 preparation for your deposition?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Do you recall seeing this document at</p> <p>23 any point prior to yesterday?</p> <p>24 A. No, ma'am.</p> <p>25 Q. And if you'll flip to the second page</p>
<p style="text-align: right;">23</p> <p>1 there's a notation 7/16/14.</p> <p>2 Do you see that?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. Do you know who put that notation on</p> <p>5 this document?</p> <p>6 A. I have no clue, ma'am. I don't know.</p> <p>7 Q. Do you recall reviewing this document</p> <p>8 again in 2014?</p> <p>9 A. I don't remember, ma'am.</p> <p>10 Q. Do you see the notation CB next to the</p> <p>11 7/16/14?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. Is there someone at your office whose</p> <p>14 initials are CB?</p> <p>15 A. I don't recall anybody that had the</p> <p>16 initials CB, ma'am.</p> <p>17 Q. All right.</p> <p>18 We're done with that document.</p> <p>19 Thank you.</p> <p>20 Did you at some point obtain a</p> <p>21 loan from a company called M Holdings, LLC?</p> <p>22 A. I don't remember getting a loan from a</p> <p>23 company except the documentation that I saw</p> <p>24 yesterday. I don't remember that name, ma'am.</p> <p>25</p>	<p style="text-align: right;">25</p> <p>1 for me.</p> <p>2 A. Yes, ma'am. I did.</p> <p>3 Q. Okay.</p> <p>4 Is that your signature there on</p> <p>5 the second page?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Do you believe that at some point you</p> <p>8 did review and sign this document?</p> <p>9 A. That's what I believe, ma'am.</p> <p>10 Q. Okay.</p> <p>11 Flipping back to the front</p> <p>12 page, it looks like there's a fax notation</p> <p>13 8/24/14, at the top.</p> <p>14 Do you see that?</p> <p>15 A. Yes, ma'am.</p> <p>16 Q. Do you know whose fax number that is?</p> <p>17 A. I don't know, ma'am. That 812 number?</p> <p>18 I don't know what number it is.</p> <p>19 Q. What were the circumstances leading up</p> <p>20 to your signing this promissory note?</p> <p>21 A. The circumstance was I was in the midst</p> <p>22 of helping the opiate crisis and the amount of</p> <p>23 referrals for me from our community and</p> <p>24 physicians -- a lot of patients came to our</p> <p>25 practice in an acute condition in 2014. So</p>

<p style="text-align: right;">26</p> <p>1 during that time, I needed -- I was looking for  2 a loan. Many lenders offered many loans as a  3 working capital, as the bridge loan, to help our  4 practice. And then my belief is I obtained one  5 of these loans during that time. That's my  6 belief.  7 <b>Q. Which lenders offered you or the</b>  8 <b>practice a bridge loan?</b>  9 A. A lot of lenders, ma'am. I obtained a  10 loan from a company called, the Bankers  11 Healthcare Group, New Logic, and Capital cards  12 and many -- yeah. Capital credit cards. Yeah.  13 <b>Q. Let's -- let's go through that. I</b>  14 <b>missed some of your answer -- and I apologize --</b>  15 <b>due to, I think, the difficulty of technology.</b>  16 <b>So if I understood you</b>  17 <b>correctly, you obtained multiple bridge loans;</b>  18 <b>is that correct?</b>  19 A. That is correct, ma'am.  20 <b>Q. Okay.</b>  21 <b>One of the lenders was Bank</b>  22 <b>Healthcare Group?</b>  23 A. Bankers Healthcare Group. It's -- the  24 abbreviation for that is BHG.  25 <b>Q. How much money was the loan you</b></p>	<p style="text-align: right;">28</p> <p>1 completely. Maybe '13 or -- '12, '13, or '14.  2 Around that time.  3 <b>Q. Okay.</b>  4 <b>And I believe you mentioned</b>  5 <b>another lender, Capital something?</b>  6 A. Yeah. Capital card. That's a credit  7 card company. I also received a lot of calls  8 and then mail solicitation, and also many people  9 came to my office also soliciting for the loan.  10 <b>Q. How much was the loan that you obtained</b>  11 <b>from Capital, the card company?</b>  12 A. I don't remember that. Maybe --  13 \$15,000, maybe. I don't know the exact amount.  14 <b>Q. And do you recall when you obtained</b>  15 <b>that loan?</b>  16 A. Around the same time. I don't  17 recollect.  18 <b>Q. Do you recall receiving any other loans</b>  19 <b>that we haven't discussed yet?</b>  20 A. I don't recall any other loan.  21 <b>Q. Okay.</b>  22 <b>Did you eventually repay the</b>  23 <b>loan from the -- the Aegis Healthcare Group?</b>  24 A. I paid off Bankers Healthcare Group. I  25 paid off the Capital card. And also I paid off</p>
<p style="text-align: right;">27</p> <p>1 <b>obtained from that group?</b>  2 A. Two hundred fifty thousand.  3 <b>Q. And when did you obtain that loan?</b>  4 A. I don't remember exactly, ma'am. It  5 might be 2012. I might have renewed it again in  6 '13 and '14.  7 <b>Q. I'm sorry. I caught 2012, and I missed</b>  8 <b>the last part of your answer.</b>  9 A. Every year I might have renewed the  10 loan. That's my feeling, yeah. I don't  11 remember exactly.  12 <b>Q. Okay.</b>  13 <b>And you mentioned New Logic.</b>  14 <b>Was that another lender?</b>  15 A. That's another co-lender from the  16 Bankers Health Group, and they recommended  17 additional loan. New Logic is another one.  18 <b>Q. Okay.</b>  19 <b>And how much was the loan you</b>  20 <b>obtained from New Logic?</b>  21 A. I don't remember the amount, ma'am.  22 <b>Q. Do you remember when you obtained that</b>  23 <b>loan from New Logic?</b>  24 A. Around the same -- around the same  25 period, I believe. I don't recollect</p>	<p style="text-align: right;">29</p> <p>1 the New Logic loan.  2 <b>Q. Do you recall when you paid off the</b>  3 <b>\$250,000 Bankers Healthcare Group loan?</b>  4 A. Last year. 2019.  5 <b>Q. Do you recall when you paid off the New</b>  6 <b>Logic loan?</b>  7 A. That was sometime back. I don't  8 remember when.  9 <b>Q. Do you recall when you paid off the</b>  10 <b>Capital card loan?</b>  11 A. That was three or four years ago.  12 <b>Q. Turning our attention back to Exhibit</b>  13 <b>1, the promissory note for a \$50,000 loan, do</b>  14 <b>you have that in front of you?</b>  15 A. Yes, ma'am.  16 <b>Q. Have you had an opportunity to review</b>  17 <b>it?</b>  18 A. Let me review that, ma'am.  19 <b>Q. Sure.</b>  20 A. I did review it before the meeting  21 today. Let me review it a little bit more.  22 <b>Q. Of course.</b>  23 A. Yes, ma'am.  24 <b>Q. What, if anything, do you know about</b>  25 <b>the lender, M Holdings, LLC?</b></p>

<p style="text-align: right;">30</p> <p>1 A. What is your question? Repeat the 2 question, ma'am. 3 <b>Q. Sure.</b> 4 <b>What, if anything, do you know</b> 5 <b>about the lender, M Holdings, LLC?</b> 6 A. I don't remember anything about M 7 Holdings, LLC. 8 <b>Q. Did you ever meet with a representative</b> 9 <b>of M Holdings, LLC?</b> 10 A. I don't recall, ma'am. I don't 11 remember. 12 <b>Q. Who did you negotiate the \$50,000 loan</b> 13 <b>with?</b> 14 MR. RAAB: I'm going to object to 15 form as vague. 16 BY MS. ARMSTRONG: 17 <b>Q. Dr. Jayachandran, you obtained a</b> 18 <b>\$50,000 loan from M Holdings, LLC, correct?</b> 19 A. That's what this record shows, ma'am. 20 But the name itself, I don't remember. M 21 Holdings, LLC, I don't remember that. 22 <b>Q. But do you recall a \$50,000 loan?</b> 23 A. I remember the loan. Yes, ma'am. 24 <b>Q. Okay.</b> 25 <b>Who did you discuss the loan</b></p>	<p style="text-align: right;">32</p> <p>1 A. Yes, ma'am. 2 <b>Q. Who is Dr. Gupta?</b> 3 A. Dr. Gupta is a physician. He's in 4 practice two and a half hours away from my 5 practice in Munster. He's near Indianapolis. 6 And that's Dr. Gupta. 7 <b>Q. And did you know Dr. Gupta before you</b> 8 <b>obtained a loan from him?</b> 9 A. No, ma'am. 10 <b>Q. How did you get introduced to Dr.</b> 11 <b>Gupta?</b> 12 A. Kumar might have -- Kumar recommended 13 me to Dr. Gupta. That's how I came to know him. 14 <b>Q. And what was the amount of the loan</b> 15 <b>that you obtained from Dr. Gupta?</b> 16 A. Fifty thousand, ma'am. 17 <b>Q. Do you know when you obtained that loan</b> 18 <b>from Dr. Gupta?</b> 19 A. From my records, I see that I received 20 it on December 19, 2014. 21 <b>Q. Okay.</b> 22 <b>And was it a loan from Dr.</b> 23 <b>Gupta individually or for -- from an entity or a</b> 24 <b>company?</b> 25 A. Individually.</p>
<p style="text-align: right;">31</p> <p>1 <b>with?</b> 2 A. I don't remember that, ma'am. 3 <b>Q. Was it Manoj Kumar?</b> 4 MR. CAUDILL: Object to form. 5 You can answer. 6 7 (There was a discussion off 8 the record.) 9 10 BY MS. ARMSTRONG: 11 <b>Q. All right.</b> 12 <b>I believe that my question</b> 13 <b>was -- why don't I just do this. I'll ask it</b> 14 <b>again.</b> 15 <b>Did you discuss a \$50,000 loan</b> 16 <b>with Manoj Kumar?</b> 17 A. I don't remember that, ma'am. 18 <b>Q. Did you discuss any loans with Manoj</b> 19 <b>Kumar?</b> 20 A. I was looking for some loan during that 21 time. I might have discussed something with 22 him. But I don't recall if I specifically 23 discussed anything with him. 24 <b>Q. Did you ever get a loan from a person</b> 25 <b>named Dr. Gupta?</b></p>	<p style="text-align: right;">33</p> <p>1 <b>Q. I apologize. I missed that?</b> 2 A. Individually, ma'am. Not from an 3 entity. 4 <b>Q. Gotcha. Thank you.</b> 5 <b>And did you repay that loan to</b> 6 <b>Dr. Gupta?</b> 7 A. Yes, ma'am. 8 <b>Q. And what did you use the money you</b> 9 <b>obtain from Dr. Gupta for?</b> 10 A. I used the money to repay the loan I 11 obtained during this time and paid off that 12 loan. The following day, I paid it off. 13 Whoever were the lenders for me for the \$50,000, 14 the original \$50,000, I paid off the loan on the 15 next day after I received the loan. It's more 16 like a refinancing the loan. 17 <b>Q. Okay.</b> 18 <b>Let me make sure I understand</b> 19 <b>that. You used the money from Dr. Gupta to</b> 20 <b>repay the \$50,000 from M Holdings, LLC?</b> 21 A. I don't remember the name, but the 22 record says M Holdings. It's confusing me 23 because I paid that -- not to M Holdings. I 24 paid it to a different company, so it's not 25 clear to me.</p>

<p style="text-align: right;">34</p> <p>1 <b>Q. Let's talk about that.</b>  2 <b>Bo, may I ask your assistance,</b>  3 <b>again? Could you please tell us what number the</b>  4 <b>exhibit is for the Chase Bank statement of</b>  5 <b>August 14 through September 14?</b>  6 MR. CAUDILL: It's two.  7 MS. ARMSTRONG: Two?  8 MR. CAUDILL: Yeah.  9 MS. ARMSTRONG: Great. Thank you.  10  11 (WHEREUPON, the document marked  12 Jayachandran Deposition Exhibit  13 2 for identification was  14 tendered to the deponent.)  15  16 BY MS. ARMSTRONG:  17 <b>Q. Dr. Jayachandran, can you please look</b>  18 <b>at Exhibit No. 2?</b>  19 A. Yes, ma'am.  20 <b>Q. And do you see the name of the account</b>  21 <b>holder on this bank statement midway down the</b>  22 <b>first page?</b>  23 A. Yes, ma'am.  24 <b>Q. And is that your wife?</b>  25 A. Yes, ma'am.</p>	<p style="text-align: right;">36</p> <p>1 that point, I didn't read this one. And I have  2 no clue who Philip McHugh was.  3 <b>Q. And sitting here today, you do not know</b>  4 <b>who Philip T. McHugh, Jr., is?</b>  5 A. From the information given to me now, I  6 know he is one of the owners of PCLS.  7 <b>Q. And just to make sure I understand,</b>  8 <b>that's information that you obtained in</b>  9 <b>preparing for this deposition; is that correct?</b>  10 A. Only yesterday I came to know this.  11 Yes, ma'am.  12 <b>Q. Okay. Thank you.</b>  13  14 (WHEREUPON, the document marked  15 Jayachandran Deposition Exhibit  16 3 for identification was  17 tendered to the deponent.)  18  19 BY MS. ARMSTRONG:  20 <b>Q. Okay. Let's go ahead and look at what</b>  21 <b>I believe is marked as Exhibit 3. It should be</b>  22 <b>an image of a check.</b>  23 <b>Do you have that in front of</b>  24 <b>you, sir?</b>  25 A. Yes, ma'am.</p>
<p style="text-align: right;">35</p> <p>1 <b>Q. And do you see on this bank statement a</b>  2 <b>wire transfer?</b>  3 A. Yes, ma'am.  4 <b>Q. Can you tell us who you received that</b>  5 <b>transfer if from?</b>  6 MR. RAAB: Object to form.  7 BY MS. ARMSTRONG:  8 <b>Q. You can answer, Doctor.</b>  9 A. I see the \$50,000 now that I'm reading  10 the details now. At the point when I received,  11 I was looking into the details.  12 <b>Q. Having reviewed this, are you able to</b>  13 <b>say who wired the \$50,000 into your wife's Chase</b>  14 <b>account?</b>  15 MR. RAAB: Object to form.  16 BY MS. ARMSTRONG:  17 <b>Q. You can answer.</b>  18 A. It was transferred from Wells Fargo  19 Bank.  20 <b>Q. Ah-huh.</b>  21 <b>Do you see the name Philip T.</b>  22 <b>McHugh, Jr.?</b>  23 A. Yes, ma'am.  24 <b>Q. Who is Philip T. McHugh, Jr.?</b>  25 A. I have no clue, ma'am, from the -- at</p>	<p style="text-align: right;">37</p> <p>1 <b>Q. All right.</b>  2 <b>Does this appear to be a check</b>  3 <b>written from your bank account?</b>  4 A. Yes, ma'am.  5 <b>Q. And is this the \$50,000 repayment you</b>  6 <b>mentioned earlier that you had funded through a</b>  7 <b>loan from Dr. Gupta?</b>  8 A. Yes, ma'am.  9 <b>Q. What is Silent Storm Holdings?</b>  10 A. I have no idea, ma'am. I believe --  11 looking at this now, I believe it was the -- one  12 of the lenders who loaned me the money  13 originally, the \$50,000. And I paid back that  14 loan after I got the refinancing.  15 <b>Q. Why did you take out a \$50,000 loan</b>  16 <b>from Silent Storm and/or M Holdings?</b>  17 MR. RAAB: Objection. Asked and  18 answered.  19 MR. CAUDILL: I'm also going to --  20 I'm also going to object to form.  21 BY MS. ARMSTRONG:  22 <b>Q. Dr. Jayachandran, why did you take out</b>  23 <b>this specific loan?</b>  24 A. This is one of the bridge loan I  25 needed.</p>

<p style="text-align: right;">50</p> <p>1 STATE OF ILLINOIS    ) 2                            ) SS: 3 COUNTY OF C O O K    ) 4 5 I, DIANE M. NULICK, a Notary Public 6 within and for the County of Cook, State of 7 Illinois, and a Certified Shorthand Reporter of 8 said state, do hereby certify: 9     That previous to the commencement of the 10 examination of the witness, the witness was duly 11 sworn to testify the whole truth concerning the 12 matters herein; 13     That the foregoing deposition transcript 14 was reported stenographically by me, was 15 thereafter reduced to typewriting under my 16 personal direction and constitutes a true record 17 of the testimony given and the proceedings had; 18     That the said deposition was taken before 19 me at the time and place specified; 20     That the said deposition was adjourned as 21 stated herein; 22     That I am not a relative or employee or 23 attorney or counsel, nor a relative or employee 24 of such attorney or counsel for any of the 25 parties hereto, nor interested directly or</p>	
<p style="text-align: right;">51</p> <p>1 indirectly in the outcome of this action. 2     IN WITNESS WHEREOF, I do hereunto set 3 my hand and affix my seal of office at Chicago, 4 Illinois, this 25th day of November, 2020. 5 6 7 8 9  10     _____ 11     Notary Public, Cook County, Illinois. 12 C.S.R. Certificate No. 084-002029. 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

## MSJ Exhibit 69

1

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
3           CHARLOTTE DIVISION  
4

5 UNITED STATES OF AMERICA                   : CIVIL  
6 ex rel., TARYN HARTNETT, and           : FILE NO.:  
7 DANA SHOCHED,                           : 3:17-CV-37  
8           Plaintiffs,                   : (CONSOLIDATED  
9           v.                               : WITH CIVIL  
10 PHYSICIANS CHOICE LABORATORY       : FILE NO.:  
11 SERVICES, DOUGLAS SMITH,           : 3:17-CV-46)  
12 PHILIP MCHUGH, and MANOJ KUMAR, :  
13           Defendants.                   :

14  
15           VIDEOTAPED DEPOSITION OF JOHN H. JOHNSON  
16 taken on behalf of the Plaintiffs herein,  
17 pursuant to the Rules of Civil Procedure, taken  
18 before me, the undersigned, Dale Curtis Rose,  
19 Jr., a Court Reporter and Notary Public in and  
20 for the Commonwealth of Pennsylvania, at the  
21 United States Attorney's Office for the Western  
22 District of Pennsylvania, 319 Washington Street,  
23 Suite 200, Johnstown, Pennsylvania, 15901, on  
24 Wednesday, September 9th, 2020, beginning at  
25 10:05 a.m.

1 Q. You mentioned your corporation. What  
2 corporation is that?

3 A. Central Anesthesia and Lighthouse Medical.

4 Q. Is that one corporation or two corporations?

5 A. Two corporations, but there was much cross-  
6 pollination, cross-staffing.

7 Q. You mentioned those were your corporations.  
8 Did anyone else have an ownership in those two  
9 corporations?

10 A. No, not those. We had a few d/b/a's,  
11 Central PA Pain Management, but they were all  
12 operating under Central Anesthesia and Lighthouse.

13 Q. And you were the sole owner of Central  
14 Anesthesia and Lighthouse; correct?

15 A. Yes.

16 Q. For the eight pain management practices that  
17 you had, roughly, how many people did you employ?

18 A. 200-plus. We had numerous independent  
19 contractors too. Maybe 20, maybe 40 independent  
20 contractors on top of the employees.

21 Q. How many doctors?

22 A. It would vary over time. Ten (10) is a good  
23 estimate at any particular time. We also employed  
24 mid-levels, PA's, and nurse practitioners, and that  
25 would vary. Most likely another 10 or so of those.

1 Q. Would there be one doctor per location I

2 would assume?

3 A. We would have several different locations

4 that each physician would cover and with overlap

5 between them mostly limited by geography. Not all

6 clinics operated five days a week. Some would. Some

7 were only one, two, three, four days a week.

8 Different doctors and different mid-levels would go to

9 different clinics on different days.

10 Q. You mentioned these began in the early

11 2000's; right?

12 A. Yes.

13 Q. And then you said at the max there was eight

14 pain management clinics open; right?

15 A. One second. It gets confusing.

16 Q. Fair enough.

17 A. Seven or eight.

18 Q. So roughly seven or eight ---

19 A. Yes.

20 Q. --- at the max? And then you seemed to

21 indicate that that number dropped at a certain point;

22 is that correct?

23 A. That was the maximum, and it really didn't

24 drop. It stayed that level until mid-2017.

25 Q. In 2012 to 2013, how many pain management



1 ran it?

2 A. Yes, my brother.

3 Q. Were those profitable?

4 A. Considering I inherited most of them, yes.

5 Q. So you had no upfront cost for the farms?

6 A. That's right, yeah. Well, a couple I  
7 purchased but ---.

8 Q. For your pain management practice, did you  
9 have a relationship with Williams Hughes and his  
10 laboratory Universal Oral Fluids Laboratory?

11 A. Yeah, yes.

12 Q. And if I refer to that lab as UOFL, you'll  
13 know what I mean?

14 A. Yes.

15 Q. How long did you have a relationship with  
16 Mr. Hughes and UOFL?

17 A. Best of my recollection from in around 2011,  
18 maybe a bit earlier.

19 Q. Can you describe your relationship with  
20 Hughes and UOFL?

21 A. I was the lab director and also I sent  
22 saliva toxicology or saliva toxicology drug testing  
23 samples to --- to him.

24 Q. Did you ever receive any payments for  
25 sending drug testing samples to Hughes and UOFL?

- 1 A. Yes.
- 2 Q. What types of payments?
- 3 A. The amount or how it was paid?
- 4 Q. What kind? Was it cash, check?
- 5 A. Check, check.
- 6 Q. So you would receive checks for sending drug
- 7 testing samples to UOFL; correct?
- 8 A. Yes.
- 9 Q. How long did you receive checks for sending
- 10 those samples to UOFL?
- 11 A. Best of my recollection from the time we
- 12 started the relationship was somewhere around 2011
- 13 until 2014. Maybe it was '12 to '14, somewhere in
- 14 there. '11 or '12 to spring of '14.
- 15 Q. And that was in addition to the payments you
- 16 received as lab director; correct?
- 17 A. No, it was just one big check.
- 18 Q. Just one big check?
- 19 A. Yeah.
- 20 Q. Do you have an estimate of how much money
- 21 UOFL paid you to refer lab tests to them?
- 22 A. I know how much they paid me in total was
- 23 somewhere around \$2.2 to \$2.4 million.
- 24 Q. Do you know what qualitative versus
- 25 quantitative testing is?

1 set the cutoff, the more reliable it is, but it's less  
2 sensitive.

3 Q. So that's something you can adjust versus  
4 using the urine or saliva cups?

5 A. The cups, there's no adjustment to it. It's  
6 either blue or not blue.

7 Q. Did PCLS ever do the quantitative testing  
8 for UOFL?

9 A. Yes, they did. That was not advertised to  
10 me by Hughes that were doing that. He presented to me  
11 that he was doing all the testing himself, qualitative  
12 and quantitative. Then I realized Physicians Choice  
13 was doing the quantitative testing because there was a  
14 report that came to me with that on it, and I was a  
15 little surprised that he was --- it didn't make any  
16 difference. The results are the results. It just  
17 seemed a little odd that he was working with another  
18 lab to do the quantitative testing.

19 Q. So you were sending samples for testing to  
20 UOFL, and those were being sent to PCLS for  
21 quantitative testing; right?

22 A. Yes. I didn't know that to begin with, but  
23 again, it didn't make --- it made no difference in the  
24 results, but I did not know that until later on.

25 Q. Did that change at any point?

1 A. Yes. Hughes set up his own analyzers.

2 Q. Do you remember when that was?

3 A. 2012/2013. I'm just not exactly sure of the  
4 date.

5 Q. It's been a while?

6 A. Yes.

7 Q. Can I steal an exhibit sticker from you?

8 \* \* \*

9 (Whereupon, the document was marked as  
10 Deposition Exhibit No. 1 for purposes of  
11 identification.)

12 \* \* \*

13 BY ATTORNEY JOHNSON:

14 Q. I'm going to show you what's being marked as  
15 Exhibit 1. Did you ever receive a letter like this  
16 from PCLS?

17 A. Yes. Would you mind if I read it all again?  
18 This is the first time I've seen this in seven/eight  
19 years.

20 Q. Certainly. Take your time.

21 A. (Witness peruses document). Yes.

22 Q. So you've seen the letter in Exhibit 1;  
23 right?

24 A. Yes.

25 Q. And that was a letter from PCLS to you?

1 A. Yes.

2 Q. And that informed you that effective  
3 November 30th, 2011 UOFL and PCLS were no longer ---  
4 PCLS was no longer doing the testing for UOFL; right?

5 A. Yes.

6 Q. Did you stay with UOFL after you received  
7 this letter?

8 A. Yes.

9 Q. Did you stay with UOFL for the entirety of  
10 your pain management practice?

11 A. Until the spring of 2014.

12 Q. Why did your relationship with UOFL end in  
13 the spring of 2014?

14 A. There was an FBI and related agency raid  
15 both at UF --- Universal and my clinics in March of  
16 2014.

17 Q. Would it be easier if we just called them  
18 Universal?

19 A. Yes.

20 Q. Probably, yeah.

21 A. The letters and the acronyms are getting a  
22 little confusing.

23 Q. I agree. We'll refer to them as Universal  
24 from now on. You mentioned there was an FBI raid in  
25 2014, Mr. Johnson. You're currently incarcerated;

1 correct?

2 A. Yes, I'm home confinement now.

3 Q. You've been released on home confinement?

4 A. I'm under --- I'm in custody, but yes, on  
5 home confinement.

6 Q. And that's the result of convictions in the  
7 Southern District of Florida and the Western District  
8 of Pennsylvania; correct?

9 A. Yes, we cut a plea deal in both  
10 jurisdictions.

11 Q. And you were sentenced to 84 months?

12 A. Yes.

13 Q. And you were ordered to pay restitution?

14 A. Yes.

15 Q. And was that \$2.3 million to Health and  
16 Human Services?

17 A. That sounds about right.

18 Q. And roughly \$720,000 to the IRS?

19 A. Yes. That's for the Pennsylvania case with  
20 Universal. The tax was me personally that was failure  
21 to remit withholding tax and that had nothing to do  
22 with Universal. The tax was on my end for my company.  
23 The \$2.3 or \$2.4 million was in relationship to  
24 payments from Universal.

25 Q. And that was for accepting monetary payments

1 to refer samples to Universal; correct?

2 A. Yes. Kickbacks, yes.

3 Q. So you accepted kickbacks to refer samples  
4 to Universal and then as part of your criminal  
5 conviction you were ordered to pay roughly \$2.3  
6 million in restitution to HHS?

7 A. Yes.

8 Q. And to be clear, you were accepting those  
9 kickbacks through the spring of 2014 when there was  
10 that FBI raid?

11 A. Yes.

12 Q. And you were accepting those kickbacks when  
13 Universal was referring the samples for quantitative  
14 testing to PCLS; correct?

15 A. Yes.

16 Q. Did anyone ever try to gain your business  
17 from Universal?

18 A. Yes.

19 Q. Who?

20 A. Many different companies.

21 Q. Did PCLS ever try to gain your business from  
22 Universal?

23 A. Yes.

24 Q. Who at PCLS tried to gain your business from  
25 Universal?



1 A. Manoj Kumar. I knew him by Manoj. He was  
2 my primary contact. Phil McHugh was also involved but  
3 not --- most of the conversations were with Manoj, the  
4 emails and --- and phone calls.

5 Q. How did PCLS, Manoj Kumar, and Phil McHugh  
6 try and gain your business from Universal?

7 A. What --- please realize it's been several  
8 years between that and now. So I'll recall to the  
9 best of my ability with this. I'm not certain who  
10 reached out to who. It's my recollection that someone  
11 from PCLS reached out to me about a relationship. And  
12 that it was --- I'm not certain if they wanted all the  
13 business or just wanted a piece of the business. I  
14 was very reluctant to sever my relationship with  
15 Hughes. It was a known entity, the system was  
16 working, but I had a large volume of samples.

17 So my thought process was maybe I can work  
18 with more than one entity at a time. And then that  
19 way it's a backup in case something happens to one,  
20 there's another entity. Now, PCLS was not the only  
21 lab that approached me. There were many other labs.  
22 I don't have the records on that and memory fails me.  
23 But I know there were several out of Louisiana,  
24 Mississippi. There were some out of Texas and other  
25 states.

1 Q. Did anyone from PCLS ever indicate to you  
2 that they were aware of the arrangement you had with  
3 Hughes and Universal?

4 A. They were aware of a relationship. I'm not  
5 certain they were --- they knew the particulars or the  
6 specifics of the relationship. They may have and  
7 didn't say it. I don't know. I didn't say anything.  
8 But from the conversations, they were aware that there  
9 was a relationship there, a financial relationship in  
10 return for sending samples.

11 Q. So from your conversations with PCLS, you  
12 believe that they were aware that you had a kickback  
13 arrangement with Universal?

14 A. Yes. That sounds rather blunt right now,  
15 but you know, at the time, it was in my mind it was  
16 denial and I sort of smoothed it over. But they were  
17 aware there was an improper relationship.

18 Q. What made you think that PCLS was aware  
19 there was an improper relationship?

20 A. In the conversations, again, I cannot tell  
21 you exact words. I can't tell you exact days. I  
22 don't recall. But the general recollection was that  
23 one of the advantages of working with PCLS was that  
24 the relationship would be more compliant was the term  
25 they used. That it would --- the financial

1 relationship would be --- it would be more compliant  
2 or less likely to be discoverable or people know about  
3 it. And one thing was too in conversation was the  
4 relationship with Hughes was not just with me but with  
5 everyone was very public. He told everyone of the  
6 relationships. I even think he had it on the website  
7 for a while. And he was very open about it.

8 Q. And Hughes was paying you straight cash by  
9 check; correct?

10 A. Check, yes.

11 Q. So your understanding was that the financial  
12 arrangement with PCLS would be done more covertly than  
13 a check?

14 ATTORNEY CAUDILL: Objection, it's  
15 leading.

16 BY ATTORNEY JOHNSON:

17 Q. You can answer.

18 A. Answer the question?

19 Q. Yes, you can answer.

20 A. Yes, it would be not so obvious.

21 Q. But there would still be a financial  
22 arrangement with PCLS?

23 ATTORNEY CAUDILL: Objection, also  
24 leading.

25 THE WITNESS: The arrangement was that

1 there wouldn't be money changing hands; okay? But  
2 what it was was PCLS had set me up with an analyzer  
3 where I could do the qualitative testing and submit  
4 the billing for that, and the reimbursement was  
5 significantly more than the point-of-care cups. And  
6 so that they would set me up with the analyzer, I  
7 would bill for that, but in return I would send to  
8 them for quantitative testing all the samples that I  
9 ran on the analyzer. That was the arrangement.

10 BY ATTORNEY JOHNSON:

11 Q. So having an analyzer in your office would  
12 be more profitable to you than using the cups?

13 A. Yes.

14 Q. Are analyzers expensive?

15 A. Expensive is a relative term.

16 Q. Do you know how much the average analyzer  
17 costs?

18 A. Yes, I do. And that depends on a lot of  
19 factors, whether you get used, used refurbished, the  
20 age of the machine, the size of the machine, the model  
21 of the machine, the manufacturer, and it depends on  
22 whether you're talking about the qualitative testing  
23 or the quantitative testing. The qualitative testing  
24 like the machine they were going to set me up with,  
25 typically an Olympus, and there's different models

1 based upon throughput. A used one that's refurbished  
2 at that time could be bought for \$40,000/\$50,000; a  
3 new one maybe twice that or more.

4 Now, on the quantitative end, the mass spec,  
5 liquid chromatography mass spectrometry, that gets  
6 very expensive. At the time, a used refurbished one  
7 of those was \$350,000/\$400,000. I know. I bought two  
8 of them. New ones were almost double that for the  
9 amount of volume that we were doing. But we weren't  
10 talking about quantitative. We were talking about the  
11 less expensive qualitative machine.

12 Q. You mentioned that it was an Olympus?

13 A. Yes, and that's also the machine that I  
14 eventually put in on my own.

15 Q. When did you eventually put in an Olympus on  
16 your own?

17 A. I think 2013.

18 Q. Why did you put in the Olympus on your own  
19 versus the Olympus that PCLS was going to arrange for  
20 you?

21 A. It was multi-factorial. Number one, I was  
22 reluctant to break my relationship with Hughes because  
23 I was sending samples to PCLS and --- but the majority  
24 of my samples were going to Universal. I had other  
25 labs I was working with too; there was no financial

1 arrangement with some of the others. But the staff  
2 when you have a big staff, there's always chatter-  
3 chatter. And Hughes had somehow found out about  
4 samples going to PCLS. And it was my understanding  
5 there was a lot of bad blood there. And so Hughes  
6 through Jeff Thomas and Hughes himself were very vocal  
7 about not working with PCLS --- PCLS.

8 And the other thing is I realized that the  
9 analyzer was not that expensive and I found another  
10 source of it where I could --- there's no upfront  
11 cost. I just paid for the analyzer through the use of  
12 the reagents. The reagents are the chemicals that are  
13 used to do the test, and there was another company  
14 that would mark up the cost of the reagents, but that  
15 included --- you know, the lease of the machine was  
16 built into the cost of the reagents. And I could  
17 actually make more money that way and not have the  
18 conflict with Hughes. So I decided to do it on my  
19 own.

20 Q. So there's two ways a doctor could buy an  
21 analyzer for their practice. You could purchase the  
22 analyzer out-front, and then --- or you could lease it  
23 and pay a higher reagent fee?

24 A. Yes. There are multiple ways of --- there's  
25 all sorts of creative financing for that, but those

1 are two ways commonly, two broad categories.

2 Q. And so you stopped referring samples to PCLS  
3 because you were, A, worried that Hughes would find  
4 out you were referring samples to PCLS and that would  
5 harm your relationship with Hughes and Universal, and  
6 B, you realized you could obtain the analyzer on your  
7 own?

8 A. Yes. I'm not certain if I completely  
9 stopped sending to PCLS. I think I did. I think I  
10 did. But I know the volume cut back, and I think I  
11 eventually stopped sending them there. But I'm not  
12 certain if I stopped every one, all the submissions.

13 Q. Let's go back to the beginning of the  
14 relationship with PCLS. Who did you talk to at PCLS  
15 in the beginning?

16 A. It was mostly Manoj. There were a few  
17 conversations with McHugh on the phone. There were  
18 emails, and McHugh directed me to work primarily with  
19 Manoj, which was not uncommon for the CEO to delegate  
20 a subordinate to deal with routine operational-type  
21 issues and set-up issues.

22 Q. You mentioned you emailed with Philip McHugh  
23 and talked to him on the phone. Did you ever meet  
24 with Philip McHugh in person?

25 A. Yes.



1 Q. When was that?

2 A. Somewhere around 2012, maybe early 2013.

3 Q. Was it before you were referring samples to  
4 PCLS?

5 A. I think I was sending them samples before  
6 that. Now whether that was a relation --- yeah,  
7 here's --- forgive me for the recollection issue, but  
8 it's been a while. I started sending them samples  
9 when we had a discussion because they wanted a good-  
10 faith gesture that I was going to send them samples  
11 that they weren't going to invest all this time and  
12 money in me and then me not send them samples later  
13 on. They set me up in a lab and then I just basically  
14 not send them any samples, so they wanted some good-  
15 faith show that I would send them samples for some  
16 period of time to show that I would be willing to work  
17 with them if they were going to invest in me.

18 Q. Who at PCLS told you they wanted that good-  
19 faith gesture?

20 A. Manoj.

21 Q. Was anyone else present for that  
22 conversation?

23 A. The in-person conversation?

24 Q. The conversation where you were told PCLS  
25 wanted a good-faith gesture of samples?

1 A. That was on the phone.

2 Q. That was on the phone with Manoj?

3 A. Yes.

4 Q. And was anyone else on that phone call?

5 A. Not that I recall.

6 Q. Was that conversation before or after the  
7 in-person meeting?

8 A. That was before.

9 Q. And so after that, you met with Manoj Kumar  
10 and Phil McHugh?

11 A. Yes.

12 Q. Where was that meeting?

13 A. That was in Altoona at one of my offices.

14 Q. What was discussed at that meeting?

15 A. The particulars of how the arrangement would  
16 work, what they were going to do and what I would do  
17 and how it would benefit me. It was my impression the  
18 face-to-face meeting was to move the process along  
19 because I had been dragging my feet, and I was  
20 dragging my feet because I was really unsure of what  
21 to do with Hughes, whether I wanted to upset that,  
22 especially with someone that it appeared that he  
23 really didn't like. You know, there was two problems.  
24 One was taking business away from him. Number two,  
25 was giving business to somebody he really despised.

1 That was my impression of things. And so that was  
2 weighing heavy on me.

3 Q. So from the outset you were worried about  
4 harming your relationship with Universal and Hughes?

5 A. Yes.

6 Q. You mentioned the particulars of how the  
7 arrangement would work were discussed at that in-  
8 person meeting with Manoj Kumar and Philip McHugh.  
9 Can you tell me a little more detail about what those  
10 particulars were?

11 A. Yes. There were a certain number of samples  
12 that they wanted per month that it was told to me that  
13 they had to cover their costs. And if it fell below  
14 that, then the arrangement wouldn't work. And to the  
15 best of my recollection, it was 200 samples, around --  
16 - maybe 250, so 200/250 samples a month that would  
17 need to run through them through the arrangement. And  
18 that may have been a negotiated number because I think  
19 they started higher than that, and we came down. But  
20 it was a number of samples that had to run through the  
21 system.

22 And also, they didn't want me using their  
23 analyzer to send samples to Hughes. And that what it  
24 would do is they would get the entire lab setup, they  
25 would provide the machine, and the lab director, and

1 the overall --- make sure the system ran smoothly.  
2 What I had to provide was the samples. I had to  
3 provide a space with all the build-out for the  
4 machine. I had to give them \$10,000. And then they  
5 were going to help with recruiting staffing and help  
6 with staff management, although the staff would be  
7 employed by me. And the samples would be sent to them  
8 for quantitative testing.

9 Q. Was the \$10,000 payment the only payment  
10 that you were expected to give to PCLS, Manoj Kumar,  
11 and Phil McHugh?

12 A. Yes.

13 Q. So you weren't expected to pay for the full  
14 cost of the analyzer?

15 A. I didn't know what the cost of the analyzer  
16 was at that time. Later on, I found out.

17 Q. And having a desktop analyzer would be more  
18 profitable to you; correct?

19 A. Yes.

20 Q. Why is that?

21 A. It's more profitable than the point-of-care  
22 cups. I was on the fence whether this would be more  
23 profitable than dealing with Hughes. That was a  
24 little on the fence. When you did all the math, they  
25 were pretty close.

1 Q. Do you know if Manoj Kumar ever made a down  
2 payment on an analyzer for use in your lab?

3 A. I don't recall. See, I'm working at a  
4 little disadvantage. I don't have access to my  
5 records, emails, and that sort of information. So  
6 it's from memory at this point.

7 Q. Who was Elan Colen?

8 A. It was my understanding he was either a  
9 physician or a chiropractor. He was some person with  
10 some medical training that was a representative or an  
11 employee of PCLS. And once we reached an  
12 understanding of how the arrangement would work, Elan  
13 came involved and he was sort of the point person from  
14 that point on. And I have to say his customer service  
15 was great. He was a welcome addition to the  
16 situation.

17 Q. So at some point, you began to have more  
18 interaction with Colen as opposed to Kumar or McHugh  
19 at PCLS?

20 A. Yes, it was at that point Colen was the main  
21 contact and then Manoj Kumar after that and then  
22 McHugh not that often.

23 Q. Were you ever pressured by anyone at PCLS to  
24 send more samples?

25 A. Yes.

1 Q. Who was that?

2 A. Elan and I think it was Manoj also.

3 Q. Was that by email, phone call?

4 A. Both. As I would dip down below whatever  
5 agreed upon level and they would complain about that  
6 that the numbers had dropped down. And also, I think  
7 there was a conversation or two where they complained  
8 of the number of medical assistance patients being  
9 sent and that they were not profitable and all that  
10 we're asking for is a fair representation across  
11 insurance lines.

12 Q. Could you explain that to me, the medical  
13 assistance patients being sent and not being  
14 profitable?

15 A. Yes, medical assistance are welfare  
16 patients, Medicaid. Medicaid universally pays less  
17 than the cost of providing any service. I don't know  
18 --- there may be, but I don't know of a single service  
19 that Medicaid pays that covers the cost of providing  
20 that service. And no one likes to deal with those  
21 patients and do the work and lose money. And most  
22 companies consider it a cost of doing business. We'll  
23 take the Medicaid to get the better paying insurances.

24 Q. So PCLS was unhappy that you were sending  
25 too many Medicaid patients basically?

1 A. Yes.

2 \* \* \*

3 (Whereupon, the document was marked as  
4 Deposition Exhibit No. 2 for purposes of  
5 identification.)

6 \* \* \*

7 BY ATTORNEY JOHNSON:

8 Q. I'm going to show you what is being marked  
9 as Exhibit 2. And is this an email from Mr. Colen to  
10 yourself?

11 A. Yes.

12 Q. And that's your email address,  
13 jjohnson@lhmed.com?

14 A. Yes.

15 Q. And it's dated January 8th, 2013?

16 A. Yes.

17 Q. And then in the body of your email to Mr.  
18 Colen you state you will be getting more samples later  
19 in the month. I just need a little breathing room for  
20 a few days; do you see that?

21 A. If you wouldn't mind, I'd like to read the  
22 entire one.

23 Q. Certainly. Take your time.

24 A. (Witness peruses document). The question?

25 Q. So you wrote to Mr. Colen you will be



1 getting more samples later in the month. I just need  
2 a little breathing room for a few days; is that  
3 correct?

4 A. Yes.

5 Q. Was that referencing the pressure you were  
6 getting from PCLS to send more samples?

7 A. Yes.

8 Q. So the breathing room you were referring to  
9 was for them to ease off on you sending the requisite  
10 number of samples?

11 A. Yes.

12 \* \* \*

13 (Whereupon, the document was marked as  
14 Deposition Exhibit No. 3 for purposes of  
15 identification.)

16 \* \* \*

17 BY ATTORNEY JOHNSON:

18 Q. I'm going to show you what's being marked as  
19 Exhibit 3. This is an email chain between Mr. Colen,  
20 yourself, and ---.

21 ATTORNEY CAUDILL: Can I get a copy of  
22 the exhibit?

23 ATTORNEY JOHNSON: Oh, sorry.

24 ATTORNEY CAUDILL: Thanks.

25 BY ATTORNEY JOHNSON:

1 Q. This is an email chain between Mr. Colen,  
2 yourself, and Steve Glenn?

3 A. Yes.

4 Q. Do you want time to read the full chain, or  
5 do you want me to just kind of pick and choose for  
6 you?

7 A. Yes, I would like to read the entire email  
8 if possible. It's these three, four pages; is that  
9 right?

10 Q. That's correct, yeah. Take your time.

11 A. (Witness peruses document). What's the  
12 question?

13 Q. Ready to talk about it?

14 A. Yes.

15 Q. All right. If you could turn your attention  
16 to the second to last page, there is an email from Mr.  
17 Colen to yourself dated March 9th, 2013; do you see  
18 that?

19 A. What time?

20 Q. 12:21.

21 A. Yes.

22 Q. And in the second to last paragraph, Mr.  
23 Colen writes they also inform me that they are still  
24 not receiving specimen volume from you again as you  
25 promised me last week. Please let me know the status

1 of this so I can report back to the lab.

2 A. Yes.

3 Q. Is this referencing the promised volume of  
4 patient samples to PCLS?

5 A. Yes.

6 Q. And then if you could turn to the next page  
7 forward?

8 A. Yes.

9 Q. You'll see another email from Mr. Colen,  
10 which actually starts on the first page. It's dated  
11 March 9th, 2013 to yourself copying Steve Glenn.

12 A. Yes.

13 Q. And in the last full paragraph you'll see  
14 Mr. Colen writes, the lab received a total of only  
15 eight samples last week from all clinics, parenthesis,  
16 which the lab has been receiving small amounts of  
17 specimens sporadically since December, closed  
18 parenthesis, down from the previous usual volume of  
19 200-plus per week?

20 A. Yes.

21 Q. Was that, again, referencing the volume you  
22 were expected to send to PCLS?

23 A. Yes.

24 Q. And then Mr. Colen later writes this was all  
25 that was received, and I informed the lab that you

1 would begin sending normal volume again as we

2 discussed?

3 A. Yes.

4 Q. Is the normal volume the 200-plus a week?

5 A. Yes.

6 Q. And then going to the first page of Exhibit

7 3, you write to Mr. Colen on March 9th, 2013 at 4:13

8 p.m., getting to 200 a week in samples will be a

9 reach, but we can do way more than eight per week;

10 correct?

11 A. Yes.

12 Q. And that's, again, referencing the expected

13 volume to PCLS?

14 A. Yes.

15 Q. And then Mr. Colen writes back in his email,

16 appreciate you looking into the volume?

17 A. Yes.

18 \* \* \*

19 (Whereupon, the document was marked as

20 Deposition Exhibit No. 4 for purposes of

21 identification.)

22 \* \* \*

23 BY ATTORNEY JOHNSON:

24 Q. I'm going to show you what's being

25 introduced as Exhibit 4.

1 don't have it in front of me; it's been that period of  
2 time. But my recollection is the agreement was that we  
3 would --- we paid the down payment for the machine.  
4 We paid the \$10,000, and then the obligations of each  
5 party to do their part of the arrangement. And ---  
6 but I don't think there was any mention of any number  
7 of samples going to PCLS or that samples had to go to  
8 PCLS. But I don't have the document here to read, and  
9 it's been that long; I can't tell you exactly what was  
10 in that document.

11 Q. So the arrangement you discussed with Mr.  
12 McHugh and Mr. Kumar in that meeting, that wasn't ever  
13 put --- the full arrangement wasn't ever put down in  
14 writing?

15 A. No.

16 Q. And it's your understanding that that  
17 arrangement would be illegal; correct?

18 A. That arrangement would be what?

19 Q. Illegal, unlawful?

20 A. The quid pro quo, the samples for this?

21 Q. Correct.

22 A. Yes.

23 Q. So there would be a reason not to put it  
24 down in writing?

25 A. Yes.

1 A. Yes.

2 Q. And then Mr. Kumar responds and then he cc's  
3 Mr. Glenn and Phil McHugh as well; correct?

4 A. Yes.

5 Q. And then he lists steps in terms of  
6 obtaining a CLIA licensure?

7 A. Yes.

8 Q. What is that?

9 A. CLIA is --- that's a certificate that to be  
10 able to run samples and bill insurance companies and  
11 any third-party payer, you have to have CLIA  
12 certification, which is a process where inspectors  
13 come by and evaluate not only the equipment but the  
14 policies, the procedures, and every aspect of the lab.  
15 It's a fairly involved --- for a high-complexity lab,  
16 it can take a full day for the inspection. And once  
17 the --- you have to pay a fee for it. It's several  
18 hundred dollars, if not more. But without the CLIA  
19 certificate, you're not able to bill insurance  
20 companies or even to use the test results for clinical  
21 medicines to ensure that the results are accurate.

22 Q. Do you remember who paid the money to CLIA?

23 A. I don't recall.

24 Q. But PCLS was helping you get the CLIA  
25 licensure; correct?

1 A. Oh, they were walking us through every  
2 aspect of it. I didn't know how to do it.

3 Q. So that was something of value to your  
4 practice?

5 ATTORNEY CAUDILL: Objection, leading.

6 THE WITNESS: It was a value because I  
7 had tried for two years to find consultants to walk  
8 me, tell me how to do it, to walk through or do it for  
9 me. And they didn't exist or they worked for other  
10 labs. And the --- it was so common with all the other  
11 labs is we're not going to tell you how to do this  
12 unless you send us samples. I just can't tell you how  
13 many labs were like that; it was enumerable. And it  
14 was no one would tell you how to do it yourself. The  
15 insurance companies were no help. The state and  
16 federal agencies wouldn't give you any guidance  
17 whatsoever on how to do it. The consultants all  
18 worked for other labs, and it was you have to send us  
19 samples and we'll tell you how to do it. So I had no  
20 idea how to do it.

21 BY ATTORNEY JOHNSON:

22 Q. So helping with the CLIA licensure is one of  
23 the things that PCLS did to you in terms of helping  
24 you set up your lab?

25 A. Yes.



1 \* \* \*

2 (Whereupon, the document was marked as  
3 Deposition Exhibit No. 8 for purposes of  
4 identification.)

5 \* \* \*

6 BY ATTORNEY JOHNSON:

7 Q. I'm going to show you what's being marked as  
8 Exhibit 8.

9 A. We're sort of going back in time; aren't we?

10 Q. Yeah, we've skipped around in time a little  
11 bit. I apologize for that.

12 A. (Witness peruses document).

13 ATTORNEY CAUDILL: Seth, do you mind if  
14 we take five minutes?

15 ATTORNEY JOHNSON: Yes. No, we can  
16 take five.

17 (BRIEF BREAK)

18 BY ATTORNEY JOHNSON:

19 Q. Dr. Johnson, when we broke, I believe we  
20 were looking at Exhibit 8. Could you turn your  
21 attention back to that?

22 A. Yes.

23 Q. And this is a series of emails with yourself  
24 and Manoj Kumar?

25 A. Yes.

1 Q. If you could go to the third to last page,  
2 which is the first email that starts the chain?

3 A. All right.

4 Q. This is an April 13th, 2012 email between  
5 Manoj Kumar to johnnyspot@atlanticbb.com?

6 A. Yes.

7 Q. Is that your email address?

8 A. Yes.

9 Q. If you could turn your attention to the  
10 second to last full paragraph?

11 A. Yes.

12 Q. Mr. Kumar writes, well, the good part is  
13 that we can do all that for you for a very reasonable  
14 cost. We would love the opportunity to meet with you  
15 over coffee/lunch/dinner, whatever is convenient in  
16 your busy schedule. Phil McHugh from PCLS and I will  
17 discuss all aspects of this lab, and we'll get the  
18 show on the road most expeditiously. We could be with  
19 you any day on Wednesday, Thursday, or Friday of the  
20 coming week; did I read that correctly?

21 A. Yes.

22 Q. Is that the --- is that referencing the in-  
23 person meeting you had with Phil McHugh and Manoj  
24 Kumar that we talked about earlier?

25 A. Yes, we only met once in person.

1 Q. And then later there's a few scheduling  
2 emails; correct?

3 A. Yes.

4 Q. And then they ask if Thursday around 12:30  
5 p.m. would be good?

6 A. Yes.

7 Q. And so you met with Phil McHugh and Manoj  
8 Kumar in April 2012; correct?

9 A. It appears from this email chain that's the  
10 case. I don't remember the exact day or month. I  
11 know we met with them.

12 Q. If this email chain was referencing that  
13 meeting, it would've been in the spring of 2012;  
14 correct?

15 A. Yes.

16 Q. And is the spring of 2012 generally  
17 consistent with your recollection of when that meeting  
18 occurred?

19 A. Yes.

20 Q. If you'll turn to the first page, Mr. Kumar  
21 emails you on Thursday, April 26th, 2012, and attaches  
22 a document called Dr. Johnson's lab list; do you see  
23 that?

24 A. Yes.

25 Q. If you will turn to the very last page of

1 this exhibit, you'll see that attachment entitled Dr.

2 Johnson's lab action plan; do you see that?

3 A. Yes.

4 Q. Okay. And it lists a number of items to do

5 in terms of getting your lab set up; correct?

6 A. Yes.

7 Q. The first is lab setup contract already with

8 Steve?

9 A. Yes.

10 Q. That's action by you?

11 A. Yes.

12 Q. The next is lab director paperwork and

13 submittal, and that's something that Manoj Kumar and a

14 technical supervisor would do?

15 A. Yes.

16 Q. Was that something that was valuable to you?

17 ATTORNEY CAUDILL: Objection.

18 THE WITNESS: Yes.

19 BY ATTORNEY JOHNSON:

20 Q. Not having to do the required paperwork to

21 set up the lab?

22 A. Yes.

23 Q. And that's something that PCLS provided;

24 correct?

25 A. They either provided or were going to

1 provide. I'm not sure we finalized any of that  
2 outside of signing the documents.

3 Q. They offered to provide to do the lab  
4 director paperwork and submittal for you?

5 A. Yes.

6 Q. What is --- the next bullet point is  
7 technical supervisor visit, start SOP and overview of  
8 lab flow submission of papers to CLIA; what is that  
9 referencing?

10 A. There was to be a technical supervisor come  
11 to the site and there's a lot of documentation that  
12 has to be. There are SOPs, policies, procedures, just  
13 a huge amount of paperwork that has to be submitted to  
14 obtain CLIA certification, and this is in reference to  
15 that.

16 Q. Was that something that PCLS offered to do  
17 for you?

18 A. Were going to do it or arrange to have it  
19 done.

20 Q. But they were ---.

21 A. I didn't even know how to do it. I had no  
22 idea what was needed or how to even go about it.

23 Q. So it was something you didn't know how to  
24 do yourself?

25 A. I had no way of --- I did not know that, and

1 I didn't know of anyone that could do it.

2 Q. And PCLS was either going to do it for you  
3 or arrange to have it done?

4 A. Yes.

5 Q. And was that something of value to you?

6 ATTORNEY CAUDILL: Objection.

7 THE WITNESS: Yes.

8 BY ATTORNEY JOHNSON:

9 Q. The next bullet point is Olympus AU 400  
10 contract signed with financing options and attractive  
11 financing option is assured. It says Phil is working  
12 on this?

13 A. Yes.

14 Q. Did you have any interactions with the  
15 desktop analyzer company?

16 A. I really don't think so.

17 Q. Was that something that PCLS was handling on  
18 your behalf?

19 A. Yes.

20 Q. Was that something of value to you?

21 ATTORNEY CAUDILL: Objection.

22 THE WITNESS: Yes.

23 BY ATTORNEY JOHNSON:

24 Q. The next bullet point reads, LIS software  
25 with integration to EMR and Phil's team will assist in

1 the integration?

2 A. Yes.

3 Q. What does that mean?

4 A. The software of the analyzer has --- you get  
5 the machine; it's just not plug and play. These  
6 machines are very complicated as I learned after the  
7 fact. And there's software the machine has. Then  
8 there's software that communicates with the machine to  
9 your EMR, your electronic medical records. There's  
10 two or three levels of software everywhere in there  
11 that I had no idea this even existed. I thought you  
12 plugged the machine in, it would work, and all of the  
13 sudden communicate. Oh, no, there's way more to it  
14 than that. And this is talking about the lab  
15 information system software. It's called LIS  
16 software.

17 Q. And is that something that PCLS offered to  
18 help you out with?

19 A. Yes.

20 Q. And did you understand the, and Phil's team  
21 will assist in the integration; did you understand  
22 that to reference Phil McHugh?

23 A. Yes.

24 Q. Was that something of value to you?

25 ATTORNEY CAUDILL: Objection. I'm just

1 going to have a standing --- so I don't have to keep  
2 doing it, a standing objection. I think it's a vague  
3 question and it calls for a legal conclusion.

4 THE WITNESS: Yes.

5 BY ATTORNEY JOHNSON:

6 Q. You can answer.

7 A. Yes.

8 ATTORNEY JOHNSON: And I'm fine with  
9 your standing objection.

10 BY ATTORNEY JOHNSON:

11 Q. The next bullet point down battery backup  
12 system purchased. What does that reference?

13 A. You need to have a battery backup in case  
14 the electricity goes down that you don't lose all of  
15 the lab results that the analyzer has produced from  
16 between the last time it downloaded to the electronic  
17 medical record software. It stores that information  
18 in the system. And if it's not downloaded, you lose  
19 all that and have to repeat it. So it's a backup  
20 energy source in case electricity goes down.

21 Q. Was that something that PCLS offered to do  
22 for you?

23 A. Yes.

24 Q. Was that something of value to you?

25 A. Yes.



- 1 Q. The next bullet down DI Water system  
2 purchased and installed. What does that mean?
- 3 A. It's a deionized water system. There's ---  
4 for these machines to operate, they have to have pure  
5 water. And there's two ways to obtain essentially  
6 pure water with no impurities. One is reverse  
7 osmosis, the RO system, where it goes through a  
8 membrane to get pure H2O or you have the deionization  
9 systems, which this is, and they're less expensive.  
10 They accomplish the same goal of having pure water  
11 because if the water goes into the testing and it has  
12 contaminants, the results can be spurious or even ---  
13 even just flat out wrong.
- 14 Q. Was that something that PCLS offered to do  
15 for you?
- 16 A. Yes. I didn't even know the battery backup  
17 system or the DI water system, I didn't know any of  
18 that was even needed. It is needed, but I wasn't  
19 aware of it. It was my --- I was being I guess naïve  
20 or uninformed. I knew nothing about it.
- 21 Q. And was that something of value to you?
- 22 A. Yes.
- 23 Q. The next bullet down, two computer purchase,  
24 network, internet access completing, positioning as  
25 advised by tech supervisor. What is that referencing?

1 A. Again, I wasn't aware this was needed.  
2 There was quite a few surprises how complex this  
3 supposed simple operation was going to be. But there  
4 was computers that were needed to enter information  
5 identifying patient information and other information  
6 into --- so the results that the machine produced  
7 could be tagged to a particular patient collection  
8 date and all that, and also to review the results  
9 within the system because there's reports you want  
10 that your EMR system can't provide you, only the  
11 analyzer can if you want to look at broad datasets,  
12 trends, and things like that.

13 Q. And is that something that PCLS offered to  
14 do for you?

15 A. Yes.

16 Q. Was that of value to you?

17 A. Yes.

18 Q. Lab build-outs, walls, floor, electric,  
19 plumbing --- I'm going to assume that means plumbing,  
20 it's misspelled.

21 A. Yes.

22 Q. And tables, visit by the tech supervisor,  
23 estimated time two weeks.

24 A. Yes.

25 Q. That bullet point, what's that referencing?

1 A. Those are tasks that we had to complete, and  
2 we did complete. It was the build-out of the physical  
3 space.

4 Q. So those were tasks that you would do on  
5 your end?

6 A. We had to do on our end, but we had to have  
7 the schematics and the layout for it because we had no  
8 idea where anything went or the electrical service or  
9 water service or the HVAC requirements or anything  
10 like that. We had no clue of what that was.

11 Q. Who provided the schematics and layout to  
12 you?

13 A. I don't recall if that was PCLS or someone  
14 they had provide that information to us, but that was  
15 provided to Steve and then Steve made sure the build-  
16 out met those requirements.

17 Q. So PCLS obtained the schematics and layouts  
18 and then provided it to Steve?

19 A. They made the arrangement that we were given  
20 this information. I don't recall if they provided it  
21 or if they paid someone or if they had an arrangement.  
22 I just don't remember how it was. I'm not sure I even  
23 knew at the time. It was something I sort of  
24 delegated to Steve to take care of and didn't really  
25 pay that much attention to it.

1 Q. They were behind getting the schematics and  
2 layouts to you?

3 ATTORNEY CAUDILL: Objection.

4 THE WITNESS: Yes.

5 BY ATTORNEY JOHNSON:

6 Q. Was that something of value to you?

7 A. Yes.

8 Q. The next bullet point down, post ad, hire  
9 MLT, and data entry/sample assistant. What does this  
10 bullet point reference?

11 A. That's the advertising for a position for  
12 the lab tech and the assistant and then helping with  
13 hiring those people and training them. And that would  
14 be our responsibility to pay for those people, but  
15 they were going to help us write --- or write or help  
16 us write the ads and help us in knowing how to hire  
17 the right people.

18 Q. And by they, you mean PCLS?

19 A. Yes.

20 Q. And was their offer to do that something of  
21 value to you?

22 A. Yes.

23 Q. The next bullet down, billing codes checked;  
24 what does that reference?

25 A. The billing codes for the quantitative ---

1 or the qualitative testing results that this machine  
2 would provide. Basically assistance to be able to  
3 make sure we had the correct codes and how to bill it  
4 properly with the proper diagnosis codes, the proper  
5 procedure codes, and how to bill it because different  
6 insurances use different codes and it was fairly  
7 complex to sort out how to bill it. It wasn't like  
8 one code for all insurance companies. They had  
9 different rules.

10 Q. So PCLS offered to help you with the  
11 billing?

12 A. Yes.

13 Q. Was that something of value to you?

14 A. Yes.

15 Q. Install Olympus and validate system?

16 A. Yes.

17 Q. Installation approximately five weeks after  
18 CLIA papers are submitted?

19 A. Yes.

20 Q. The CLIA papers first, we talked about that  
21 approval process a little bit earlier; correct?

22 A. Yes.

23 Q. Did you ever submit for the CLIA licensure?

24 A. I think we did. I think.

25 Q. Did you get that approved?

1 A. Well, we eventually had it approved. I'm  
2 not sure if it was approved through PCLS, or we did it  
3 later on. I just don't recall. I think we --- I  
4 think we did it and had it all set up through PCLS,  
5 but we never had the machine installed. One was a  
6 financial concern raising the money, and the other was  
7 the issue with Hughes. So I'm not certain if we had  
8 the CLIA for this lab or we used it for our own lab or  
9 we got another one for our own lab; I don't recall.

10 Q. But PCLS offered to help with the CLIA  
11 licensure and that process; correct?

12 A. Yes.

13 Q. Was that something of value to you?

14 A. Yes.

15 Q. Going to the install Olympus and validate  
16 system, could you just tell me what that means?

17 A. The machine had to be delivered and then set  
18 up, and it's much more complicated than just plugging  
19 it in a wall. You had to make sure that the results  
20 were standardized. You would get the state to give  
21 you the CLIA certificate would give you unknowns. You  
22 would tell them what you were going to test for. Then  
23 they would send you mystery samples containing various  
24 substances that you were going to test for. Then you  
25 had to give back the --- you were blinded. You didn't

1 know what was in there. Then you had to test it and  
2 give the results back to the state.

3 And if you correctly identified each  
4 substance and each sample and didn't identify any  
5 substance that was not supposed to be there, then they  
6 would use that as part of the criteria to issuing your  
7 CLIA certificate. They wanted to make sure your  
8 machine worked and was reliable. And it had to be set  
9 up and installed and validated where you run samples  
10 from the manufacturer from some other vendor with  
11 known substances in and you did that before you did  
12 the validation for CLIA. You had to get your machine  
13 set up to make sure it properly identified everything  
14 and calibrate it so it would properly identify. And  
15 so that's what is involved to make sure the machine  
16 gave reliable results.

17 Q. Did PCLS offer to help with that?

18 A. Yes.

19 Q. In what way were they going to help?

20 A. They --- it was my understanding they were  
21 not going to do this themselves. They would arrange  
22 to have someone else do it or show us how to do it or  
23 somehow walk us through or somehow get it done, but I  
24 don't think they were going to do it themselves with  
25 their own employees.

1 Q. In the action by column it mentions Phil  
2 will assist in getting this done?

3 A. Yes.

4 Q. What was your understanding of what Phil  
5 McHugh was going to do in reference to that bullet  
6 point?

7 A. He was going to oversee this aspect of all  
8 these items. He was going to oversee that. It was my  
9 impression that was one of the more important items,  
10 so it would rise to his level of involvement.

11 Q. The last bullet point and before I move on,  
12 was the items in the bullet point we were just talking  
13 about, the install Olympus and validate system and the  
14 CLIA licensure, were those things of value to you?

15 A. Yes.

16 Q. The last bullet point, accept and process  
17 samples?

18 A. Yes.

19 Q. Is that just the end result of setting up  
20 the lab?

21 A. Basically that's the final thing. Once all  
22 this is done, then we can --- once we get the CLIA  
23 approval, then we're set to start processing samples.

24 Q. And these samples would be sent to PCLS;  
25 correct?



1 Q. Yeah. And over time they paid you about  
2 \$2.3 million?

3 A. Yes.

4 Q. And that's specifically for sending  
5 referrals to UOFL?

6 A. Yes.

7 Q. Now, UOFL, what kind of services did they  
8 provide?

9 A. They were a toxicology lab.

10 Q. Did they --- do you know whether UOFL --- so  
11 it's right there, it's in the name, oral fluid. Did  
12 they test anything other than saliva?

13 A. Oral fluids is it. No urine, no blood.

14 Q. And I think you testified that sometimes  
15 UOFL would send PCLS samples for confirmation testing?

16 A. It was my understanding early on they sent  
17 them all to Physicians Choice for confirmation  
18 testing, and then there was a split and they sent none  
19 after that.

20 Q. Do you have any idea why Physicians Choice  
21 split from UOFL?

22 A. What I'm told, and this is speculation as  
23 you guys like to say, is that Hughes decided he was  
24 going to do the confirmation testing himself and  
25 capture that revenue source. It would be financially

1 more advantageous for him than sending it out to

2 Physicians Choice.

3 Q. And I believe you said that sometime in ---  
4 well, you testified that there was a meeting between  
5 you and Phil McHugh and Manoj Kumar sometime in the  
6 spring of 2012; right?

7 A. It's in here. It's '12 or '13. Whatever  
8 the documents say is what it was.

9 Q. I'll represent to you that it was the spring  
10 of 2012 according to those emails.

11 A. Okay.

12 Q. So prior to that time though, you had been  
13 contacted by Physicians Choice? I mean they were  
14 trying to get your business; correct?

15 A. Yes.

16 Q. About how many other laboratories were  
17 trying to get your business?

18 A. I can't count them.

19 Q. About how many pitches did you hear for your  
20 business from other laboratories?

21 A. Numerous. It got to the point that I would  
22 have my staff field those calls and tell them no so I  
23 didn't have to be bothered with it.

24 Q. Did you have meetings with other  
25 laboratories?

1 A. I ---.

2 Q. Not sure?

3 A. It's been too long, and I don't have my  
4 records. I can't ---.

5 Q. Do you recall when it first occurred to you,  
6 hey, you know, maybe I should go see about securing an  
7 analyzer?

8 A. That's what --- that's what happened.

9 Q. Do you recall when that thought popped into  
10 your head?

11 A. After the --- after the potential --- after  
12 the arrangement with Physicians Choice sort of fell  
13 through or didn't move along because of my delaying it  
14 for two --- I delayed it for two reasons. One is  
15 Hughes and the other was the amount of the cost of the  
16 analyzer. I didn't feel like I had the money to pay  
17 for that.

18 Q. To pay Physicians Choice for the analyzer?

19 A. No, whatever company that was in the other  
20 documents.

21 Q. Oh, I see. So you felt you didn't have the  
22 money to pay that third-party company for the analyzer  
23 that Physicians Choice was procuring for you?

24 A. Yes.

25 Q. Okay. So you were going to pay for that?

1 A. That was presented to me that I would have  
2 to pay for that. And the other option was the reagent  
3 lease, and when I built my own lab I did the reagent  
4 lease arrangement where the lease payments are built  
5 into the reagent fees.

6 Q. Right.

7 A. And even though you pay more money, you  
8 don't have to come up with the cash upfront.

9 Q. So --- okay. So ---.

10 A. And then after the raid I'm thinking --- the  
11 timelines get all muddled here.

12 Q. I know. I know.

13 A. But after the raid, we put in our own  
14 quantitative analyzer, the mass spec. That was a big  
15 step up and started doing that ourselves.

16 Q. Yeah. But that would've been in '14?

17 A. That would've been --- I think that was in  
18 '14, I think.

19 Q. All right. And again, I'm not --- I know  
20 it's difficult to recall, but at some point you're  
21 looking at the contract for the purchase of the  
22 Olympus AU 400 and you're thinking I can't afford  
23 that, I need to look into other options for procuring  
24 an analyzer. And you were also concerned I think you  
25 testified about preserving your relationship with Bill

1 upon these records.

2 Q. You don't have any independent recollection  
3 of those dates?

4 A. No. I --- I know sort of a general idea how  
5 things transpired in a general timeline.

6 Q. Yeah.

7 A. But I just don't recall the months and the  
8 years or the seasons.

9 Q. Okay. You never got the analyzer from PCLS?

10 A. Never. No, did not.

11 Q. Just let me look through my notes. I think  
12 I'm finished. Hang on one second.

13 A. Sure.

14 Q. Not many more, I promise. Do you recall  
15 meeting with an Assistant United States Attorney by  
16 the name of Jonathan Ferry?

17 A. Out of North Carolina?

18 Q. Yes.

19 A. Yes.

20 Q. And when did that meeting occur to the best  
21 of your memory?

22 A. '16 or '17.

23 Q. And the purpose of that meeting was for them  
24 to ask you questions about among other things  
25 Physicians Choice; right?

1 didn't work anymore. They took a backup file I had on  
2 my current laptop, and they took --- they copied the  
3 information on the server. I don't know what they ---  
4 I assume they took everything. I have no idea and I  
5 didn't ask and they didn't tell.

6 ATTORNEY CAUDILL: Dr. Johnson, thanks  
7 for your time today.

8 THE WITNESS: Oh, you're quite welcome.

9 RE-EXAMINATION

10 BY ATTORNEY JOHNSON:

11 Q. I will be very brief. Looking at Exhibit 5,  
12 which was the contract for the analyzer we've talked  
13 about?

14 A. Yes.

15 Q. You testified earlier that receiving this  
16 was a surprise to you; correct?

17 A. Yes, as looking through the other emails,  
18 there were numbers mentioned in another email, and I'm  
19 not sure it was before or after this one. But  
20 overall, the amount of money was a surprise to me,  
21 yes.

22 Q. It was your understanding that under the  
23 arrangement with PCLS you would just pay \$10,000;  
24 correct?

25 ATTORNEY CAUDILL: Objection, leading.

1 BY ATTORNEY JOHNSON:

2 Q. You can answer.

3 A. Yes.

4 Q. And we've talked about alcohol and  
5 cooperation agreements today, but your testimony here  
6 today has been truthful; correct?

7 A. Yes.

8 ATTORNEY JOHNSON: Nothing further.

9 ATTORNEY CAUDILL: Thank you, Dr.  
10 Johnson.

11 THE WITNESS: Thank you.

12

13 \* \* \* \* \*

14 DEPOSITION CONCLUDED AT 1:55 P.M.

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1 COMMONWEALTH OF PENNSYLVANIA :

2 : SS:

3 COUNTY OF CAMBRIA :

4 I, DALE CURTIS ROSE, JR., a Freelance Court  
5 Reporter and Notary Public in and for the Commonwealth  
6 of Pennsylvania, do hereby certify that the foregoing  
7 deposition was taken before me at the time and place  
8 specified in the caption; that I administered unto the  
9 Deponent his oath to testify to the truth, the whole  
10 truth, and nothing but the truth; that he was present  
11 and then orally examined and testified as herein set  
12 forth; that I reported said examination and testimony  
13 stenographically, and that this transcript of  
14 deposition constitutes a true and correct  
15 transcription of the shorthand report of said  
16 deposition.

17 I FURTHER CERTIFY that I am neither related to  
18 nor employed by any counsel or party to the cause  
19 pending, nor interested directly or indirectly in the  
20 event thereof.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 and affixed my seal of office this 18th day of  
23 September, 2020.

24 \_\_\_\_\_  
25 Date Notary



<p style="text-align: right;">Page 1</p> <p>UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION Case No. Civil File No. 3:17-CV-37 (Consolidated with Civil File No. 3:17-CV-46) United States of America, ex rel. Taryn Hartnett and Dana Shoched,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs. Physicians Choice Laboratory Services, Douglas Smith, Philip McHugh and Manoj Kumar, Defendants.</p> <p style="text-align: center;">-----/</p> <p style="text-align: center;">VIDEO DEPOSITION OF CHRIS KEMP</p> <p style="text-align: center;">BY VIDEOCONFERENCE November 12, 2020 Scheduled for 10:00 a.m. Commencing at 10:06 a.m. to 11:47 a.m.</p> <p style="text-align: center;">Taken before Sonnia Martinez, Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause. -----</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p>1 2 Witness: Chris Kemp 3 Direct Cross 4 By Ms. Armstrong 5 5 By Mr. Caudill 49 6 E X H I B I T S 7 United States' 8 No. 1 Page 05 No. 2 Page 37 9 No. 3 Page 37 No. 4 Page 38 10 No. 5 Page 39 No. 6 Page 40 11 No. 7 Page 40 No. 8 Page 41 12 No. 9 Page 42 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 ON BEHALF OF THE PLAINTIFF: 3 R. Andrew Murray 4 United States Attorney 5 Suite 1650, Carillon Building 6 227 West Trade Street 7 Charlotte, North Carolina 28202 8 By: Katherine Armstrong, 9 Assistant U.S. Attorney 10 katherine.armstrong@usdoj.gov</p> <p>11 Also present: 12 Cathleen Hollowell 13 Investigator (contractor) 14 U.S. Attorney's Office - WDNC 15 227 West Trade Street, Suite 1650 16 Charlotte, NC 28202</p> <p>17 ON BEHALF OF PHILIP McHUGH: 18 Weaver, Bennett &amp; Bland 19 196 North Trade Street 20 Matthews, North Carolina 28105 21 By: Bo Caudill, Esquire and 22 Matthew Villmer, Esquire</p> <p>23 Also present: 24 George Thomas, Videographer 25 -----</p>	<p style="text-align: right;">Page 4</p> <p>1 (The following was had.) 2 THE VIDEOGRAPHER: In the case styled 3 U.S., ex rel, Taryn Hartnett, et al, 4 versus Physicians Choice Laboratory 5 Services, et al. Civil Action 6 Number 3:17-CV-37. 7 This is the videotaped deposition via 8 Zoom of Chris Kemp. 9 Today's date is November the 12th, 10 2020. 11 The time on the video monitor is 12 10:06 a.m. 13 Would counsel please state their 14 appearances for the record. 15 MS. ARMSTRONG: Sure. 16 This is Katherine Armstrong, an 17 Assistant U.S. Attorney on the Western 18 District of North Carolina. I represent 19 the United States. 20 MR. CAUDILL: Mr. Kemp, my name is Bo 21 Caudill. I represent the defendant, 22 Philip McHugh. 23 MR. VILLMER: This is Matt Villmer, I 24 represent Defendant Philip McHugh. 25 THE VIDEOGRAPHER: Okay, Sonnia,</p>

1 A. They did.

2 Q. Okay. Tell us about that, how you  
3 came to have Dr. Florete and his practice as  
4 one of your accounts.

5 A. Sure. It -- you know, taking the  
6 job, you know, you did our due diligence of  
7 what was going to be needed and how it's  
8 gonna, you know, potentially go after your  
9 business. And then when I came on board with  
10 the company, as it is most pharmaceutical  
11 companies out there, they -- they get reports  
12 on who is -- who's writing prescriptions for  
13 X, Y, Z medications and that -- you can kind  
14 of strategically go after those because, at  
15 the time, that's the business that -- that we  
16 were going after for toxicology test and -- as  
17 well as genetic testing for various markers  
18 that the company tested for. And so I had  
19 approached him many times in several months in  
20 before I actually got a, you know, an  
21 appointment with his folks and it started from  
22 there. And then -- I knew he was one of the,  
23 based on the criteria that our company had,  
24 these reports -- and forgive me, I can't  
25 recall what the name of the reports were. But

1 that industry in Jacksonville. So he was one  
2 of the top ten percent, you know, in  
3 Jacksonville, the big doctors, if you will,  
4 that I was approaching.

5 Q. Okay. And so when you say the number  
6 they wrote, are you like referring to the  
7 number of pain prescriptions that --

8 A. Yes, correct, correct. So those were  
9 the accounts that we would go after and, you  
10 know, provide toxicology testing for them,  
11 solutions thereof.

12 Q. Okay. And you mentioned it took you  
13 several months to actually get in with him or  
14 his staff, what was the reason for that?

15 A. Just it's -- I -- I would label it  
16 just the nature of the business of sales.  
17 It's just knocking -- you know, initially it  
18 was a cold call and you got to build your way  
19 up to, you know, speaking with them and  
20 meeting, and so I -- I went through that you  
21 process, you know, trying to get in touch  
22 would their office manager and then presenting  
23 what we could provide for them. And then I  
24 got, you know, put up with the -- with  
25 Orlando, Dr. Orlando Florete, and so forth.

1 they're nationally generic reports that you  
2 can get, I suppose. But I knew he was a big  
3 account for this area and so I spent a lot of  
4 time, you know, going after the bigger  
5 accounts and he was one of them.

6 Q. When you say "based on the criteria,"  
7 can you kind of walk me through what you mean  
8 by that?

9 A. Yes. So, as I mentioned, the company  
10 paid some company, national company, to get  
11 reports on, you know, who is either writing  
12 prescriptions that we needed to test for or  
13 companies that -- or, you know, new doctors  
14 that transferred from one, you know, city to  
15 another, we would pay attention to those as  
16 well. And that's -- that's -- those are the  
17 reports that we -- it essentially told you who  
18 was writing what and how many potential  
19 prescriptions they were writing.

20 Q. And did those reports also identify  
21 providers as "big accounts," to use your  
22 words?

23 A. Well, it's just based on the number,  
24 the volume that they wrote versus, that there  
25 -- you know, a doctor that was competing in

1 And then that -- that just pushed on, meeting  
2 after meeting after meeting to try earn their  
3 business.

4 Q. And do you recall who IPM sales  
5 manager was at the time you were trying to get  
6 that account?

7 A. IPM sales manager, so my direct boss?

8 Q. I apologize, Mr. Kemp. Office  
9 manager, sorry.

10 A. Oh, gosh, no, I do not. It was a  
11 female.

12 Q. Okay. And did you have any personal  
13 connections or contacts with IPM while you  
14 were trying to get its business?

15 A. Like personal contacts, from cold  
16 calling and meeting the people in the front  
17 desk and different nurses at different  
18 locations, you know, just the process of  
19 sales, you know --

20 Q. Okay.

21 A. -- trying to earn sales or earn their  
22 business, get a meeting, so through that I met  
23 folks and tried to nurture those  
24 relationships.

25 Q. Okay. Prior to beginning cold

<p style="text-align: right;">Page 17</p> <p>1 calling on the practice, did you know anyone 2 who worked there or have any friends or 3 personal connections with anyone who worked at 4 IPM? 5 A. Yeah, I knew a nurse at one time at 6 one of his locations, but he closed down 7 relatively -- during my sales process, if you 8 will. 9 Q. And during the time you had the IPM 10 account how many locations were operating? 11 A. Initially it was three and then that 12 got down down to two. So -- as I began the 13 sales process he had three accounts, three 14 locations, and then -- I guess day one we got 15 the initial setup, maybe 30 days in or so he 16 closed the third office. So for the bulk of 17 my business I think it was mainly coming from 18 two locations, if I recall. 19 Q. Were both those locations in 20 Jacksonville? 21 A. Yes. 22 Q. Do you recall when you first met with 23 Dr. Florete in person? 24 A. Yeah, roughly. It was in his office 25 trying to, you know, pitch our -- what we</p>	<p style="text-align: right;">Page 19</p> <p>1 Dr. Florete and his practice in an effort to 2 get that account, do you know if Dr. Florete 3 had used PCLS? 4 A. No, we were a new company. Nobody in 5 Jacksonville had used our services before I 6 came on board. I was the first rep in this 7 region, this location. 8 Q. Okay. And when -- during your tenure 9 at PCLS, did other reps get added to the 10 Jacksonville area or region? 11 A. No, not locally. At the tail end 12 they were talking about potentially splitting 13 my area, but I left before that -- that 14 actually came to fruition. 15 Q. In the course of working to get the 16 Florete and IPM account, did you meet with any 17 of the other providers at the practice? 18 A. No, I did not. It was, you know, he 19 was the decision-maker and everything started 20 and stopped with him, what I came to find out, 21 and so there forwarded most of me -- the 22 meetings I was involved with was with him. 23 And sometimes his office manager or he had a 24 runner that would, you know, I guess went 25 between the two offices, and, forgive me, I</p>
<p style="text-align: right;">Page 18</p> <p>1 could provide his office and his practice. 2 And then to get an appointment, you know, 3 initial 30 minutes, if you will, that was my 4 first kind of introduction. 5 Q. And what type of information did you 6 provide in that first introduction to 7 Dr. Florete? 8 A. Well, it was really getting to know 9 his practice beyond, you know, what the 10 reports I mentioned earlier and the daily 11 routine and where -- and then from there I 12 strategically, I guess, provided our 13 offerings, where we could help. And I guess 14 one of the bigger ones was time, you know, 15 getting -- sending test in, getting results 16 back quickly and efficiency. 17 Q. Do you know what lab or labs 18 Dr. Florete was using for urine tests before 19 he signed on to PCLS? 20 A. I do not. I know -- I remember him 21 --he had used multiple labs, you know, I would 22 say the previous five years, but I couldn't -- 23 I don't recall what those names of those labs 24 were. 25 Q. And before you started calling on</p>	<p style="text-align: right;">Page 20</p> <p>1 can't remember his name or his actual title, 2 but he was in a few of those meetings. 3 Q. Okay. Do you recall when Dr. Florete 4 and IMP actually signed up with you as an 5 account with PCLS? 6 A. Oh boy, it was, I would say, a good 7 six months, maybe even eight months, from my 8 first start date with PCLS. 9 Q. Okay. So I'm notoriously bad at math 10 but let me think about it. So you started 11 with PCLS in the spring of 2013. 12 A. April, yep. 13 Q. Okay. 14 A. So it's in the fall, late fall, I 15 believe, and then -- I believe. I can't 16 remember exactly, but it seems about right. 17 Q. All right. I am going to do my best 18 to share a document with you, bear with me. 19 A. Sure. 20 Q. I have been successful at this in the 21 past but not always. Hold on a second. 22 Mr. Kemp, I am -- or I can give you 23 control of the screen so that you can scroll 24 through this, does that work for you? 25 A. Yeah, sure.</p>

<p style="text-align: right;">Page 21</p> <p>1 Q. Actually, I thought I could. Hold on 2 a second. 3 A. Sure. 4 Q. All right, Mr. Kemp, I think you now 5 have the ability to get on here and control 6 this screen so that you can scroll through 7 this document. Let me know if that works. 8 A. Sorry, I'm unable to scroll through. 9 Q. Let me try something -- that's fine, 10 you know, what I can do is -- 11 A. Wait, I think I got it. 12 Q. Did you get it? Is that you that you 13 just moved that? 14 A. Nope. 15 Q. I can just scroll through. 16 A. Okay. 17 Q. If this is easier. 18 A. Sure. 19 Q. Why don't I just do that, then. 20 A. Sure. 21 MS. ARMSTRONG: I'm going to mark 22 this as Exhibit 1. 23 (Government's Exhibit Number 1 was 24 marked for identification and is attached 25 hereto.)</p>	<p style="text-align: right;">Page 23</p> <p>1 And then our sales manager at the 2 time, Joe Munden. 3 Then Aida, I believe she was one of 4 the folks internally that helped coordinating, 5 you know, if we had travel, if we needed 6 different -- you know, be a rep for an event 7 the doctors put on or various 8 hospital-affiliated learning seminars, 9 anything like that. 10 And then it was -- obviously the 11 subject was Institute of Pain Management. 12 Q. Thank you. And at the time you sent 13 this email in July of 2013, is it your 14 recollection that Dr. Florete was not yet 15 signed up with the company? 16 A. Yes. 17 Q. It looks like you all are discussing 18 in this email a meeting with Dr. Florete where 19 he would come to the lab; is that correct? 20 A. Yes, correct. 21 Q. All right. What is the purpose of 22 having Dr. Florete come meet at PCLS? 23 A. So when I first signed on with PCLS 24 they were still in these remote offices in 25 Carolinas and they -- we were in the process</p>
<p style="text-align: right;">Page 22</p> <p>1 BY MS. ARMSTRONG: 2 Q. All right. Let me get to the top of 3 the first email. Go just ahead and take your 4 time reviewing this, please. 5 A. Okay. 6 Q. And let me know if you're ready for 7 me to scroll down. 8 A. Sure. 9 Q. Thanks. 10 A. Okay. Okay. 11 Q. All right. Do you recall this email, 12 now having had a chance to review it? 13 A. Yeah, yeah, now I do, yeah. 14 Q. Who were the people you sent it to? 15 A. Let's see, Masud, he was a -- one of 16 our genetics kind of reps. He floated around 17 our -- our -- the southeast to help reps, kind 18 of talk more about on the genetics testing, 19 which in the email is listed GX, and so he's 20 the -- that's who I initially cc'ed Todd 21 Seder, my direct boss. 22 Jack Davis, he was another resource 23 for us in, I guess, as a company from a -- if 24 we needed help getting into the weeds about 25 the toxicology and/or genetic testing.</p>	<p style="text-align: right;">Page 24</p> <p>1 of building a brand new building, brand new 2 lab, it was state-of-the-art equipment, and so 3 that -- that was built and then the company 4 had moved in there, and so we really wanted to 5 kind of promote, you know, we were kind of a 6 state-of-the-art company and promote our kind 7 of our lab, and so one thing that I think a 8 few reps throughout the country did, I 9 believe, is probably more geographically 10 located, you know, closer to -- to our 11 corporate office, but if we had the capability 12 of flying in doctors so they could take a look 13 at the building and, you know, our -- our 14 process firsthand to, you know, gain their 15 business. And, you know, obviously, as a 16 sales rep, we wanted a hundred percent of an 17 office's business. At the time a lot of 18 doctors wanted to send it to multiple places 19 for, I guess, their own various reasons. 20 So obviously a bigger account, which 21 I would label IPM, or Dr. Florete's office, I 22 would label him as a bigger, you know, we 23 wanted to get a hundred percent of his 24 business, so whatever, you know, take flying 25 him up to corporate and taking a look and</p>

6 (Pages 21 to 24)

<p style="text-align: right;">Page 25</p> <p>1 getting firsthand, you know, knowledge of kind  2 of how we do things, that was a primary  3 objective.  4 Q. And did this visit to PCLS ever  5 happen?  6 A. Yes.  7 Q. And do you recall when -- I don't  8 need an exact date, but month, year, that  9 Dr. Florete actually to visit the lab?  10 A. Based on the email, this email, I  11 would say it happened within about 30 days,  12 because they had to set up flights 30, 45  13 days, at least.  14 Q. Did PCLS pay for Dr. Florete to come  15 to Charlotte?  16 A. Gosh, I can't -- I do not recall.  17 You know, I believe -- I just don't recall. I  18 want to say -- I want to say I thought it was  19 a flight or a hotel but that was it. There  20 was a limit and I don't recall now. My  21 corporate office handled that; I wasn't  22 involved with that part of it.  23 Q. Did you come to the meeting at PCLS  24 with Dr. Florete?  25 A. Yeah, I actually -- at first I wasn't</p>	<p style="text-align: right;">Page 27</p> <p>1 owner of the company. What was Phil's role at  2 PCLS while you were there?  3 A. I didn't -- we didn't see him a lot.  4 He would poke his head in every once in a  5 while if we had to come back for some, you  6 know, corporate training as we rolled out our  7 genetic testing or -- when I first got there,  8 you know, everybody met, both he and Joe  9 Munden.  10 His primary role, I know he -- he got  11 involved with some of our bigger accounts.  12 And saying involved, you know, he would send  13 an email or, you know, on our behalf saying,  14 hey, look, you know -- for instance, for me it  15 was, hey, Chris, you know, he's our rep, he  16 told me a little bit about you, we look  17 forward to hopefully partnering with you,  18 things like that, just to kind of put a touch  19 on from, I guess, an ownership level with  20 larger accounts so they feel like they're, you  21 know, wanted/needed, so forth.  22 Q. And during the time you worked for  23 PCLS were you physically located and living in  24 Jacksonville?  25 A. That's correct, yes.</p>
<p style="text-align: right;">Page 26</p> <p>1 able -- couldn't get on the same flight. Then  2 they got me in, so I ended up flying up with  3 him as his rep.  4 Q. Do you recall who else -- do you  5 recall who else met with Dr. Florete when he  6 visited PCLS?  7 A. Oh gosh, he met with everybody in our  8 office, you know, that was over a certain --  9 you know, over every department, so that he  10 could kind of get a taste of when -- you know,  11 if they sent urinalysis samples in, where it  12 started from, from receiving to going through  13 testing, seeing our lab, how it's done. He  14 met with some of our C-suite folks, Joe Munden  15 was one. I believe -- I believe Jack Davis  16 was there, I don't recall.  17 And some of our -- our owners, Phil  18 McHugh was there. Oh gosh, there was another  19 gentleman. I can't recall his name. He --  20 gosh, it may come to me, sorry.  21 But he -- he met with everybody that  22 was, you know, that either ran a department or  23 had, you know, owned the company or was at a  24 C-suite level for us.  25 Q. And you mentioned Phil McHugh as an</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. How many times would you say you  2 would at PCLS' corporate headquarters or the  3 lab during your tenure?  4 A. Oh, goodness. I would say -- at the  5 lab -- now, we would be -- I'd say at the lab  6 about four or five times, but we would also go  7 up around the lab at a hotel for like sales  8 training and it was maybe ten to thirty  9 minutes away from the -- from the office, and  10 that would be another -- I'd say that's a  11 total combined eight times, roughly.  12 Q. Do you recall where the lab was  13 physically located when you worked for PCLS?  14 A. Yeah, it was in Rockhill.  15 Q. Were the sales trainings you  16 mentioned different than the annual trainings  17 that we've already talked about?  18 A. Yes, yes, they were more geared to,  19 you know, how to bring in sales, how to make  20 better cold calls, close the sale cycle,  21 things of that nature.  22 Q. And who presented those trainings?  23 A. There is a gentleman up around there  24 that ran a -- it's called Sandler Sales  25 Training. I don't recall his name, but the</p>



1 company outsourced it to him in the beginning  
2 of if my tenure with -- there. And then, as  
3 closer to the end of my tenure, you know, we  
4 had a lot of personnel changes and they -- I  
5 guess they discontinued that relationship and  
6 went a different route and brought somebody  
7 else, you know, that taught sales training in  
8 the country. And forgive me, and I don't  
9 recall either of their names, but yeah.

10 Q. Okay. I'm going to turn back to the  
11 email for a moment --

12 A. Sure.

13 Q. -- and see if there's anything else I  
14 want to ask you about.

15 Near the bottom of the email you  
16 write "This will be a great thing for the PCLS  
17 anchor in Jax," can you tell me what you meant  
18 by that statement?

19 A. Yes, so we -- because we were a new  
20 company and, you know, as a sales rep, I  
21 wanted to be at the top, you know, the top  
22 sales rep for the company, and I was hoping  
23 to, you know, have Jacksonville be the leading  
24 or at least North Florida, specifically  
25 Jacksonville, if you will, be the kind of

1 leading accounts or, you know, I would be the  
2 larger rep in the State of Florida, so that's  
3 what I meant by becoming an anchor.

4 And then because I knew IP -- or  
5 Institute of Pain Management was a large  
6 account, I knew that would be a nice footprint  
7 to kind of -- you know, because as a sales  
8 rep, once you get a big account you're able  
9 to, sometimes, you know, people are familiar  
10 with their name, hey, we do all the testing  
11 for X, Y, Z, we'd love to have you, too, so  
12 we'd use that to build from.

13 Q. And, okay. So when you say that you  
14 thought IPM was going to be a big account for  
15 PCLS, can you kind of explain to me all these  
16 things that you consider going into what makes  
17 an account a big account?

18 A. Sure. I mean, it's rather simple,  
19 it's -- you know, how many -- how many  
20 urinalysis testing do they generally do and if  
21 they don't -- if an office doesn't do it but  
22 is writing certain prescriptions, we would try  
23 to explain of the importance of doing so. And  
24 for Institute of Pain Management specifically  
25 it was, you know, as I mentioned earlier, we

1 -- you know, we'd get these national reports  
2 and derived from there what -- how many  
3 prescriptions they wrote and we'd say, okay,  
4 this person is writing a lot so surely they're  
5 testing. And as I went through the sale cycle  
6 with his account I kind of understood that it  
7 was definitely a big -- could be a big  
8 account. It was going to be my biggest  
9 account at that time, so I knew, as I  
10 mentioned in that email, it would be a nice  
11 anchor, so I can kind of work that. But I  
12 hope that answers.

13 Q. Okay. Did you track the volume of  
14 samples your accounts were sending to PCLS?

15 A. Yes, we -- we, yes, absolutely, every  
16 rep did.

17 Q. How did you do that? How was that  
18 accomplished?

19 A. We would log into our internal system  
20 that we had at the time. And forgive me, I  
21 don't know the name of -- recall the name, but  
22 we would log into their internal system, we  
23 would see how many submission -- toxicology  
24 submissions, urinalysis submissions came in  
25 the day before or the past week or the past,

1 you know, month, quarter, and kind of, you  
2 know, scaling that up from there.

3 Q. Did you monitor the amount of samples  
4 Dr. Florete's practice was referring to PCLS?

5 A. Yes.

6 Q. And what do you recall about the  
7 volume of his sample referral to PCLS?

8 A. We -- it kind of started, you know,  
9 from a standstill to a sprint, if you will.  
10 He decide that he was going to send, you know,  
11 use us as his primary lab and we got the bulk  
12 of his samples rather, you know, initially,  
13 and that kind of maintained for a few months.

14 Q. And after a few months did something  
15 change with the volume of samples?

16 A. It didn't change, he was -- I guess  
17 they were going through some practice changes  
18 and as far as how the urinalysis test went  
19 out, I guess, we -- I was -- they were coming  
20 from two offices and then I think they kind of  
21 drilled down to one and then we started  
22 talking about genetic testing and only one  
23 location was doing to do that and so it just  
24 -- I wouldn't say it dropped off but it just  
25 kind of built up, plateaued, and kind of

1 stayed right there, if you will.  
 2 Q. Sitting here today do you remember  
 3 the -- I guess the highest volume that IPM  
 4 referral ever reached?  
 5 A. Oh, wow, I do not, sorry.  
 6 Q. That's okay.  
 7 A. It was more than any other account I  
 8 had, I know that.  
 9 Q. We talked earlier about IPM signing  
 10 as a PCLS account. Can you walk us through  
 11 how a practice or provider signs up with the  
 12 lab?  
 13 A. Yeah, it's relatively easy. I guess  
 14 most of the work is done by the rep. It's  
 15 simply getting the loca -- if they say, yes,  
 16 we're going to use you, we basically have to  
 17 get their -- get them an account number.  
 18 There's a little form that we filled out,  
 19 submitted that internally, they would get them  
 20 loaded in our system and -- so we can track  
 21 things electronically, and those things being  
 22 the toxicology test.  
 23 So we would get -- once that's set up  
 24 we would get supplies sent out and it's less  
 25 than had a week, I think it was like two or

1 three days, actually, get them loaded up with  
 2 supplies. The supplies being the cups that  
 3 were utilized for the technology testing, the  
 4 mail -- the overnight envelopes with labels  
 5 and things of that nature. And then we -- I  
 6 would, for a good two weeks or so, maybe even  
 7 longer than that, I would -- I would  
 8 periodically stop there every day or every  
 9 other day to help them, you know, hey -- so  
 10 their office staff knew what to do and did  
 11 everything, got everything sent out correctly  
 12 so it would arrive to us in the best way so  
 13 then we could track things and go from there.  
 14 Q. And did providers sign paperwork  
 15 called Provider Acknowledgement Forms?  
 16 A. I believe so. And forgive me, my  
 17 memory on that. I know that there was -- it  
 18 was just one signature that we needed for them  
 19 to kind of say that, yes, they were going to  
 20 us as a lab, before we kind of send out  
 21 supplies that, you know, the company paid for.  
 22 Q. I am going to show you another  
 23 document. Fingers crossed it goes a little  
 24 more smoothly.  
 25 All right. Can you see that

1 Mr. Kemp?  
 2 A. Yes.  
 3 Q. I will slowly scroll through it so  
 4 you have a chance to reacquaint yourself with  
 5 this.  
 6 A. Yeah. And so -- I'm sorry, this is a  
 7 different form that I was thinking.  
 8 Q. Okay.  
 9 A. But this -- this was sent in for each  
 10 test, basically. As I mentioned on the  
 11 supplies, it was -- they had to go down, check  
 12 the items, you know, the different various  
 13 drugs they wanted to test for, and then they  
 14 would, you know, sign at the bottom and that  
 15 could go -- come in with -- with every sample.  
 16 Q. Would this go in with every sample or  
 17 would a separate order or requisition form go  
 18 in with every sample?  
 19 MR. CAUDILL: Objection --  
 20 THE WITNESS: Yeah, forgive me.  
 21 MR. CAUDILL: I'm sorry, let me just  
 22 press pause. Mr. Kemp, I'm sorry, I may  
 23 occasionally object and I just wanted to  
 24 make sure my objection gets on the record,  
 25 so I'm going to object to the form of that

1 question.  
 2 You can go ahead.  
 3 MS. ARMSTRONG: You can answer,  
 4 Mr. Kemp.  
 5 THE WITNESS: I apologize.  
 6 MR. CAUDILL: No, you're fine.  
 7 THE WITNESS: So, yeah, I apologize,  
 8 this is part of the setup, forgive me.  
 9 So they could say -- so they weren't  
 10 doing that every time. They would check  
 11 off certain things they wanted tested on  
 12 each patient and then that would go in as  
 13 part of their setup and then, you know,  
 14 it's -- to your request, to your point and  
 15 the question, the rec form is the portion  
 16 that gets sent with the sample.  
 17 BY MS. ARMSTRONG:  
 18 Q. And when you say setup, you mean part  
 19 of their on boarding to PCLS?  
 20 A. Yes.  
 21 Q. Great. I'm just going to scroll  
 22 down.  
 23 Who was the provider that signed this  
 24 Provider Acknowledge Form?  
 25 MR. CAUDILL: Objection.

<p style="text-align: right;">Page 57</p> <p>1 Choice and the Institute of Pain Management</p> <p>2 prior to you starting to work with Physicians</p> <p>3 Choice, and I believe your testimony -- and I</p> <p>4 am summarizing so please free to correct me --</p> <p>5 was that there really was no relationship with</p> <p>6 the Institute of Pain Management prior to you</p> <p>7 starting work with Physicians Choice; is that</p> <p>8 a fair summary of your testimony?</p> <p>9 A. Yeah. I knew -- he thought he had</p> <p>10 known our company before but it turned -- from</p> <p>11 what I recall, it turned out, no, he didn't,</p> <p>12 and, you know, we were a very new company,</p> <p>13 like I -- I was one of the first eight reps</p> <p>14 they hired.</p> <p>15 Q. And so just to make sure I understand</p> <p>16 that, to what extent -- other than through</p> <p>17 secondhand information that you would have</p> <p>18 from communicating your supervisors and other</p> <p>19 people with Physicians Choice, to what extent</p> <p>20 would you have been aware of Physicians</p> <p>21 Choice's efforts to work with the Institute of</p> <p>22 Pain Management?</p> <p>23 A. Could you explain, I don't --</p> <p>24 Q. Yeah. I guess I'm trying to</p> <p>25 understand the source of your knowledge of</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. All right. You testified a little</p> <p>2 bit about a meeting that took place with</p> <p>3 Dr. Florete at the Rockhill laboratory in</p> <p>4 2013. Do you recall testifying about that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And it sounds like you flew up from</p> <p>7 Jacksonville with Dr. Florete to bring him to</p> <p>8 the laboratory so that he could meet various</p> <p>9 individuals and tour the lab; is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. All right. And how did that meeting</p> <p>12 go?</p> <p>13 A. It seemed to go very well. I mean,</p> <p>14 he was somewhat blown away seeing firsthand of</p> <p>15 how we take samples in and how efficient we</p> <p>16 were as a company and especially as a new lab.</p> <p>17 We were gearing up from the size of our lab</p> <p>18 and the machines we had to -- to really go</p> <p>19 very, very big and be kind of a national --</p> <p>20 huge national player in that industry and he</p> <p>21 was very pleased to see because he -- I guess</p> <p>22 he had mentioned that he was hoping to maybe</p> <p>23 grow some more offices, you know, down the</p> <p>24 road and that we could support them and not</p> <p>25 dip in efficiency. So overall it went</p>
<p style="text-align: right;">Page 58</p> <p>1 what efforts or what relationship, if any,</p> <p>2 existed between the Institute of Pain</p> <p>3 Management and Physicians Choice before you</p> <p>4 started working for Physician Choice.</p> <p>5 A. Oh, there was -- I didn't know of any</p> <p>6 before I started working there or before he</p> <p>7 started, you know, the account started</p> <p>8 submitting samples to us.</p> <p>9 Q. You would have asked, you know -- or</p> <p>10 basically you would have had conversations</p> <p>11 with other people at Physician Choice and they</p> <p>12 would have told you, yeah, we've not worked</p> <p>13 with that doctor --</p> <p>14 A. Yeah, that's correct. We didn't have</p> <p>15 an account number for them, so that was kind</p> <p>16 of a first indicator for us -- at least for me</p> <p>17 that I was told that we needed to get them</p> <p>18 started up as -- as with any new -- new</p> <p>19 office.</p> <p>20 Q. But in terms of the possibility that</p> <p>21 someone may have pitched Institute of Pain</p> <p>22 Management on Physicians Choice services prior</p> <p>23 your start date, is it fair to say you</p> <p>24 wouldn't really have any knowledge of that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 60</p> <p>1 fantastic, from my understanding.</p> <p>2 Q. Yeah. And so let me back up just a</p> <p>3 little bit, too, because I don't want to walk</p> <p>4 over this. I mean, you had been trying to</p> <p>5 break that account for a while by the time</p> <p>6 he's at Rockhill; is that fair to say?</p> <p>7 A. Oh, yeah, absolutely.</p> <p>8 Q. And can you talk to me a little bit</p> <p>9 -- I think you -- you testified a little bit</p> <p>10 about this, because can you tell me about</p> <p>11 those efforts, how did you try to break that</p> <p>12 account?</p> <p>13 A. So, you know, initially we -- you</p> <p>14 know, it's an industry I wasn't familiar with,</p> <p>15 so I leaned on some of the resources the</p> <p>16 company had, and that was they would order, my</p> <p>17 understanding was, most pharmaceutical</p> <p>18 companies get these -- this information of</p> <p>19 like who, what providers write what, how many</p> <p>20 they -- how many prescriptions they write on a</p> <p>21 monthly basis to help us really, you know, go</p> <p>22 after, you know, what you would label a big</p> <p>23 account, a medium account and a small account.</p> <p>24 So we would pepper days accordingly to kind of</p> <p>25 go after those accounts and that's how I -- I</p>

15 (Pages 57 to 60)



1 knock, you know, cold call initially, started  
 2 trying to set up a meeting with whoever I  
 3 needed to try to get to, as I went through the  
 4 process, find out Dr. Florete was basically  
 5 the one that made all the decisions, so I knew  
 6 I had to eventually get in front of him  
 7 somehow or another, so it was a process.

8 Q. Yeah. And so you -- the process  
 9 started with cold calls and emails and  
 10 progressed to trying to set up meetings. Do  
 11 you recall when your first meeting with  
 12 Dr. Florete would have been?

13 A. Oh, I do not. Once I found out after  
 14 getting trained up, you know, on some of the  
 15 details of our products we provided or  
 16 services we provided from a testing  
 17 perspective, I just -- you know, I knew I had  
 18 to pick at least four to six whale accounts,  
 19 big accounts, if you will, to -- I needed to  
 20 touch those on a daily basis to kind of get  
 21 ramped up as a new rep in a new -- brand new  
 22 territory.

23 Q. Would you describe it as a lot of  
 24 work, breaking that account?

25 A. Sure. Absolutely.

1 meeting with Dr. Florete and his practice  
 2 manager; is that right?

3 A. Yes.

4 Q. All right. So fair to say that by  
 5 July 23, 2013 you have sat down at least on  
 6 one occasion with Dr. Florete?

7 A. Yes.

8 Q. Okay. And in this email you talk  
 9 about rescheduling his corporate trip. Is  
 10 that the trip that you were talking about  
 11 where he came up to Rockhill to take a look at  
 12 the laboratory?

13 A. Correct.

14 Q. And so, because this email is  
 15 referencing rescheduling that trip, my  
 16 assumption is, and you tell me if this  
 17 assumption is right or wrong, that it had been  
 18 previously schedule.

19 A. Yeah. There was, you know, he had --  
 20 he owned a very big practice, so his time was  
 21 limited and I believe -- I know that had a big  
 22 play as to why it was rescheduled. And then  
 23 also making sure all of our, you know, heads  
 24 of our departments were in office at the time  
 25 to accommodate, you know, a visit like that.

1 Q. All right. So you mentioned you  
 2 didn't recall when you first met with  
 3 Dr. Florete. Do you recall where you would  
 4 have first met with Dr. Florete?

5 A. It would have -- it would have been  
 6 in his office.

7 Q. All right.

8 A. One of them.

9 Q. I want to look back at the email that  
 10 Ms. Armstrong showed you that's marked as  
 11 Exhibit 1 to your deposition. Let me pull  
 12 that up. Bear with me one second.

13 A. Okay.

14 Q. I'm sorry, Mr. Kemp, are you able to  
 15 see that email?

16 A. Yes, I can.

17 Q. Great. Okay. Let me know if at any  
 18 point you need me to zoom in on it, okay?

19 A. Yes.

20 Q. All right. So I want to start with  
 21 the email that you sent down here, this email  
 22 is dated July 23, 2013 at 3:40 p.m., do you  
 23 see?

24 A. Yes.

25 Q. And it says that you just had a

1 Q. It was very difficult logistically to  
 2 put this trip together, fair to say?

3 A. Yes.

4 Q. All right. So it had been scheduled  
 5 at least once and this email is saying, We  
 6 need to reschedule to August 15th and 16th, do  
 7 you see that in the second line of the email?

8 A. Yes, I do.

9 Q. Do you think that the trip was  
 10 actually -- actually went forward around  
 11 August 15 or 16?

12 A. That sounds about right.

13 Q. All right. And in the body of this  
 14 email you talk about a few other things that I  
 15 want to ask you about. In the second  
 16 paragraph here you refer to GX samples. I  
 17 believe you testified earlier that those are  
 18 genetic testing samples; is that right?

19 A. Yes, that's correct.

20 Q. That's a service that Physicians  
 21 Choice was beginning to offer around the time  
 22 that you were working there?

23 A. Yes.

24 Q. And you were pitching Dr. Florete on  
 25 Physicians Choice's genetic testing; is that

1 everybody kind of drops their -- what they're  
2 doing to make sure that the customer feels,  
3 you know, appreciated and we're there for him  
4 or her, whoever visits us. So I thought it  
5 was -- I thought it went spectacular from the  
6 -- you know, from my portion that I was  
7 involved with so, and we ended up getting the  
8 business so I would say that was a win.

9 Q. When did you learn that Dr. Florete  
10 was ready to move forward with Physicians  
11 Choice?

12 A. It was probably about a week or --  
13 maybe a week or two after the visit, I would  
14 suspect, somewhere around there.

15 Q. All right. So that would put you  
16 somewhere in late August/early September?

17 A. Yes. And there's sales reports out  
18 there that we had internally that would give  
19 you a more definitive answer.

20 Q. What's the ramp-up time once someone  
21 says, hey, I'm ready to go, I want to start  
22 referring samples, what's the ramp-up time  
23 associated with getting that process --

24 A. You know, it's actually different for  
25 every location. At the time it was very

1 and send everything. And so once we had all  
2 the proper paperwork, account setup, we -- he  
3 kind of flipped the switch and turned it on  
4 and we started receiving, I would say, the  
5 bulk of his business.

6 Q. And were you happy about that?

7 MS. HOLLOWELL: Excuse me, this is  
8 Cathleen, Kat was kicked off, she needs to  
9 reconnect.

10 MR. CAUDILL: Oh, no. Okay. All  
11 right, yeah. Thanks, Cathleen.

12 MS. HOLLOWELL: Sure.

13 MR. CAUDILL: Okay. Mr. Kemp, we're  
14 going to pause and go off the record for  
15 just a second until Kat can rejoin.

16 THE WITNESS: Certainly.

17 THE VIDEOGRAPHER: Okay. We're going  
18 off the video record at 11:34 a.m.

19 (Recess was taken and Ms. Armstrong  
20 joined the deposition.)

21 THE VIDEOGRAPHER: We're back on the  
22 video record at 11:41 a.m.

23 BY MR. CAUDILL:

24 Q. Mr. Kemp, let me repeat what I just  
25 asked you, I'm going to phrase it slightly

1 commonplace from an office or practitioner to  
2 not send all their samples to one location,  
3 you know, kind of test you out. And then some  
4 of them would spread it over multiple labs and  
5 keep it that way and everybody gets a portion,  
6 because there's -- you know, obviously my  
7 competition was knocking on their doors as  
8 well.

9 So for his account specifically it  
10 was kind of like he flipped the switch and  
11 said, okay, you know, I feel comfortable using  
12 PCLS, so I need you to go around and train all  
13 my offices on how to submit, and so that's  
14 where those Provider Acknowledgement Forms  
15 probably came in as a process to get that  
16 going.

17 Q. Yeah, and I think I understand that,  
18 my question is a little different. So what  
19 I'm wondering is from the time -- from the  
20 time you found out that Dr. Florete wants to  
21 use Physicians Choice, how much lead time does  
22 Physicians Choice need before it starts  
23 receiving samples from Dr. Florete?

24 A. As long as they have an account  
25 number they can, you know, turn the switch on

1 differently: Were you happy to learn that  
2 Dr. Florete had decided to use Physicians  
3 Choice?

4 A. Yes.

5 Q. And is that because part of your  
6 compensation as an employee of Physicians  
7 Choice included bonuses based on sales  
8 performance?

9 A. That is correct.

10 Q. And can you explain to us just a  
11 little bit about how about that works, how you  
12 were compensated while you worked at  
13 Physicians Choice?

14 A. Certainly. So we would -- as a W-2 I  
15 got a salary plus commission. And the  
16 commission plans varied, multiple, multiple  
17 times while I was there, but in essence it was  
18 a percentage of what was paid out by the, you  
19 know, the insurance, the individual patient  
20 insurance. So it was all really tied up --  
21 tied up or, I'm sorry, began based on the  
22 volume of test that were sent from a specific  
23 account.

24 Q. And so your -- part of your  
25 compensation while you were at Physicians

<p style="text-align: right;">Page 73</p> <p>1 Choice was these commissions that you were  2 getting based on referrals from the Institute  3 of Pain Management?  4 A. Yes, the toxicology test, correct.  5 Q. Great. Do you recall how you found  6 out that Dr. Florete was ready to move forward  7 with Physicians Choice?  8 A. I know I -- I was in -- stopped by at  9 some point in his office just to do my --  10 after the trip, just touching every day trying  11 to, you know, keep it on the burner, if you  12 will, so he'd want to join, and he said, I  13 think we're -- I think we're going to be good  14 to go, what do we need to do to get set up or  15 how do we need, you know, go through that  16 process, so that's where we kind of began the  17 paperwork or account setup process.  18 Q. And that was to -- I think you  19 testified earlier, to your recollection, a  20 couple weeks after the trip?  21 A. Yes, I believe so, yes.  22 Q. I think you mentioned that you didn't  23 work with Phil McHugh very closely but you did  24 have some interactions with Philip McHugh.  25 A. Yes, absolutely, especially, I guess,</p>	<p style="text-align: right;">Page 75</p> <p>1 Physicians Choice, did you continue to make  2 calls to the Institute of Pain Management?  3 A. Oh, absolutely.  4 Q. What kind of efforts, after they  5 started using Physicians Choice, did you  6 engage in to keep that business?  7 A. I probably touched their account  8 three times a week just to make sure that if  9 anybody had any questions, if they hired any  10 new personnel make sure they were trained up,  11 and, you know, I -- I knew they were going to  12 be probably my biggest account so I wanted to  13 make sure I nurtured that until everybody felt  14 comfortable with submitting, you know, samples  15 to us as a company.  16 Q. And so you said about three times a  17 week, was that the case really from the time  18 they started using Physicians Choice until you  19 left the company?  20 A. That's correct.  21 MR. CAUDILL: Mr. Kemp, I don't have  22 any further questions for you, sir.  23 Thank you for your time today.  24 THE WITNESS: Thank you.  25 MS. ARMSTRONG: Mr. Kemp, this is Kat</p>
<p style="text-align: right;">Page 74</p> <p>1 as one of the first reps to be hired, you  2 know, from where we -- where my tenure with  3 them began and they had multiple offices in  4 this office park to the big lab space that we  5 got in Rockhill, you know, he -- we'd go for  6 training and he would -- if he was in town he  7 would attend a dinner with all -- all the  8 attendees, so -- from the employees that were  9 reps, things -- or he'd poke a head in and  10 say, hey, you know, and then I'd -- that's the  11 kind of dialogue we had, because everything  12 was pretty much handled, you know, from my  13 direct boss and up the chain through him.  14 Q. All right. Let me just take two  15 minutes off the record to review my notes and  16 I think I'm almost done, if not completely  17 done, Mr. Kemp, so bear with me one second.  18 THE VIDEOGRAPHER: Okay. We're going  19 off the video record at 11:44 a.m.  20 (Recess taken.)  21 THE VIDEOGRAPHER: We're back on the  22 video record at 11:46 a.m.  23 BY MR. CAUDILL:  24 Q. Mr. Kemp after Dr. -- after the  25 Institute of Pain Management started using</p>	<p style="text-align: right;">Page 76</p> <p>1 again, and I do not have any questions  2 either.  3 Thank you, we -- we appreciate your  4 time.  5 THE WITNESS: Absolutely.  6 THE VIDEOGRAPHER: All right. We're  7 going off the video record, then, at 11:47  8 a.m.  9 (Deposition concluded.)  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>

19 (Pages 73 to 76)

## 1 CERTIFICATE OF OATH

2  
3 STATE OF FLORIDA  
COUNTY OF MIAMI-DADE4  
5 I, the undersigned authority, certify  
6 that Chris Kemp appeared before me and was  
7 remotely duly sworn.8 WITNESS my hand and official seal this  
9 12th day of November, 2020.10  
11  
12  
13  
14 -----*Sonia Martinez*  
15 Sonia Martinez  
Notary Public - State of Florida  
16 My Commission No. GG 969119  
My Commission Expires 03/12/2024  
17  
18  
19  
20  
21  
22  
23  
24  
251 REPORTER'S CERTIFICATE  
2 STATE OF FLORIDA  
COUNTY OF MIAMI-DADE3  
4 I, Sonia Martinez, Notary Public in and  
for the State of Florida at large, do hereby  
5 certify that Chris Kemp was by me first duly  
remotely sworn to testify the whole truth;  
6 that I was authorized to and did report said  
remote deposition in stenotype; and that the  
7 foregoing pages, numbered from 1 to 78,  
inclusive, are a true and correct  
8 transcription of my shorthand notes of said  
remote deposition.9  
10 I further certify that said remote  
deposition was taken at the time and place  
hereinabove set forth remotely and that the  
11 taking of said remote deposition was commenced  
and completed as hereinabove set out.12  
13 I further certify that I am not an  
attorney or counsel of any of the parties, nor  
am I a relative or employee of any attorney or  
14 counsel of party connected with the action,  
nor am I financially interested in the action.15  
16 The foregoing certification of this  
transcript does not apply to any reproduction  
of the same by any means unless under the  
17 direct control and/or direction of the  
certifying reporter.18  
19 IN WITNESS WHEREOF, I have hereun  
my hand this 20th day of November, 2020.20  
21 -----*Sonia Martinez*  
22 Sonia Martinez  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL FILE NO. 3:17-CV-37  
(CONSOLIDATED WITH CIVIL FILE NO. 3:17-CV-46)

UNITED STATE OF AMERICA ex rel.	)	
TARYN HARTNETT, and DANA SHOCHED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEPOSITION OF MANOJ KUMAR
	)	
PHYSICIANS CHOICE LABORATORY	)	
SERVICES, DOUGLAS SMITH, PHILIP	)	
MCHUGH AND MANOJ KUMAR,	)	
	)	
Defendants.	)	
	)	

On Friday, October 16, 2020, commencing at 8:42 a.m., the deposition of Manoj Kumar was taken on behalf of the Plaintiff at the US Attorney's Office, Carillon Building, 227 West Trade Street, Suite 1650, Charlotte, North Carolina, and was attended by Counsel as follows:

APPEARANCES:

KATHERINE T. ARMSTRONG, ESQ.  
Assistant United States Attorney  
US Attorney's Office  
227 West Trade Street, Suite 1650  
Charlotte, North Carolina 28202  
on behalf of the Plaintiff

BO CAUDILL, ESQ.  
MATTHEW M. VILLMER, ESQ.  
Weaver, Bennett & Bland, PA  
196 North Trade Street  
Matthews, North Carolina 28105  
on behalf of the Defendant Philip McHugh

(Appearances continue)

1 A Yes, ma'am.  
2 Q What do you do?  
3 A A manage a group of clinics in Asheville.  
4 Q Asheville, North Carolina?  
5 A Yes, ma'am.  
6 Q What types of clinics do you manage?  
7 A They are pain clinics.  
8 Q When you say manage, just talk to us generally  
9 about your roles and responsibilities.  
10 A Administrative role.  
11 Q What does that mean?  
12 A Hiring people, making sure the clinics are  
13 running okay, all facilities are available for  
14 the clinicians. Typically that's the role.  
15 Q Do you have any other prior work experience  
16 managing medical practices?  
17 A Yes, ma'am.  
18 Q Tell me about that.  
19 A In Indiana it was called Pain Management  
20 Centers of Southern Indiana and then it was  
21 Texas Pain Institute in Dallas. In between  
22 that I've given guidance to a couple of  
23 physicians, not as a full-time employee but  
24 just as a consultant.  
25 Q Great. When were you working or providing

1 Southern Indiana, give us some examples of  
2 administrative duties.  
3 A Oversee billing, talk to contractors, hiring  
4 people, making sure facilities are running,  
5 making schedules.  
6 Q Were you involved in any way, while you were a  
7 manager of Pain Management Centers of Indiana,  
8 in the laboratories referral of urine drug  
9 testing to outside labs?  
10 A No, ma'am.  
11 Q Why did you end up leaving the practice in  
12 2010?  
13 A It got closed down.  
14 Q Why did it get closed down?  
15 A Because the owner-physician was indicted for  
16 doing too many -- various reasons, one of  
17 which was doing too many procedures.  
18 Q Do you recall what happened in his criminal  
19 case?  
20 A He went to prison for a short period of time.  
21 I did not know how much.  
22 Q Did the practice cease operating at that point  
23 when Dr. Tiwari was indicted?  
24 A Yes, ma'am.  
25 Q When did you work for Texas Pain Institute in

1 services for the Pain Management Centers of  
2 Southern Indiana?  
3 A From 2005 to like 2009 -- 2010. Sorry, 2010.  
4 Q Sure, thank you. What type of practice was  
5 the Pain Management Centers of Southern  
6 Indiana?  
7 A It was a pain group, ma'am.  
8 Q Was that one office location or multiple?  
9 A It had multiple locations.  
10 Q Was there a physician who ran that practice?  
11 A The owner is the physician.  
12 Q Who was that?  
13 A His name was Dr. Kamal Tiwari.  
14 Q What was your title when you were working for  
15 Pain Management Centers of Southern Indiana?  
16 A It started as HR manager and then after it  
17 became manager in the last, I would say, one  
18 year.  
19 Q Were you a W2 employee for that practice?  
20 A Yes, ma'am.  
21 Q In your role as manager for Pain Management  
22 Centers of Southern Indiana, what types of  
23 duties did you perform?  
24 A All administrative duties.  
25 Q In the context of Pain Management Centers of

1 Dallas?  
2 A From 2015, March-April onwards, till 2018  
3 January, end.  
4 Q What type of services did you provide for that  
5 pain clinic?  
6 A Similar administrative services.  
7 Q What you've already described to us, billing,  
8 contractors, etcetera?  
9 A Yes, ma'am.  
10 Q Were you involved in any way with Texas Pain  
11 Institute's referral of urine drug testing to  
12 laboratories?  
13 A They had -- we had an internal lab. So there  
14 was nothing going out.  
15 Q But did Pain Management Centers of Southern  
16 Indiana have an in-house lab?  
17 A It did not have an in-house lab.  
18 Q Did Pain Management Centers of Southern  
19 Indiana send all of its patient samples out to  
20 other laboratories for urine drug testing?  
21 A Yes, ma'am.  
22 Q Do you recall what laboratories that Pain  
23 Management Centers of Southern Indiana  
24 physicians were referring to?  
25 A It was a laboratory based out of Indianapolis.

1 I do not recall the name.  
 2 Q How many providers worked at Pain Management  
 3 Centers of Southern Indiana, if you recall?  
 4 A More than 20.  
 5 Q Do you know if any of the providers at Pain  
 6 Management Centers of Southern Indiana ever  
 7 referred samples for urine drug testing to  
 8 Physicians Choice Laboratory?  
 9 A No, ma'am.  
 10 Q You don't think they did or you don't know?  
 11 A I do not know.  
 12 Q If I say PCLS or Physicians Choice, can we  
 13 agree that means Physicians Choice Laboratory  
 14 Services?  
 15 A If you say so.  
 16 Q If I say PCLS, will you know I'm referring to  
 17 Physicians Choice Laboratory Services?  
 18 A Yes, ma'am.  
 19 Q Great, just to cut down on some of the words  
 20 that we have to use today to simplify. Do you  
 21 know if PCLS ever marketed its services to  
 22 Pain Management Centers of Southern Indiana?  
 23 A How do you say marketing? What do we qualify  
 24 as marketing, ma'am?  
 25 Q Sure. Do a sales rep from PCLS ever speak

1 samples for urine drug testing to PCLS?  
 2 A Yes, ma'am.  
 3 Q When did they start referring to PCLS?  
 4 A I do not recall the date or the month, but  
 5 around 2014.  
 6 Q When you worked for Texas Pain Institute, were  
 7 you a W2 employee?  
 8 A Yes, ma'am.  
 9 Q You mentioned that you had also given guidance  
 10 to some providers as a consultant. Can you  
 11 identify those providers for us?  
 12 A Can you say it again?  
 13 Q Sure. Can you tell us who those providers  
 14 were that you provided consulting services to?  
 15 A I provided consulting services to physicians  
 16 who left to make their own practices after  
 17 Pain Management of Southern Indiana stopped  
 18 working, and these were Dr. Masimore and Dr.  
 19 Shah.  
 20 Q Are there any other physicians for whom you  
 21 provided consulting services other than Drs.  
 22 Masimore and Shah?  
 23 A Not directly consulting services at that time.  
 24 Q What do you mean by not directly consulting  
 25 services?

1 with any of the providers or staff at Pain  
 2 Management Centers of Southern Indiana?  
 3 A I would say the staff is only me, that none of  
 4 the reps spoke to nobody else. That's what I  
 5 recall.  
 6 Q So let me make sure I understand that. A  
 7 sales representative from a urine drug testing  
 8 laboratory would only speak with you in your  
 9 capacity as manager of the practice?  
 10 BY MR. CAUDILL:  
 11 Objection to the form. You can answer.  
 12 BY MS. OWEN:  
 13 You can answer when he objects.  
 14 BY THE DEPONENT:  
 15 Okay. No, not true. They would speak to the  
 16 doctors.  
 17 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 18 Q So do you know if anyone from PCLS ever spoke  
 19 to any of the doctors at Pain Management  
 20 Centers of Southern Indiana?  
 21 A I do not know, ma'am.  
 22 Q You would not have been involved in that at  
 23 all?  
 24 A No, ma'am.  
 25 Q Did Texas Pain Institute ever refer patient

1 A By me -- by saying that, in conversation with  
 2 a physician, I may suggest thing but not that  
 3 I managed them or gave consultancy to them.  
 4 So while discussing, I will suggest, "Hey,  
 5 these are things to do. These are nice things  
 6 to do." But it's not that I am consulting  
 7 with them.  
 8 Q Were physicians paying for this type of  
 9 discussion?  
 10 A It was -- no, this is not a paid thing. This  
 11 was a friendly discussion happening when you  
 12 meet somebody.  
 13 Q So your paid consulting work was limited to  
 14 Dr. Masimore and Dr. Shah?  
 15 A Yes, ma'am, at that time.  
 16 Q I think you mentioned this earlier, but just  
 17 to confirm, you were not a W2 employee of  
 18 either Dr. Masimore or Dr. Shah?  
 19 A I was not, ma'am.  
 20 Q We'll talk about Dr. Masimore and Dr. Shah a  
 21 little bit later, but first I would like to  
 22 kind of go back to background here. Other  
 23 than the work you've already discussed, did  
 24 you perform services on behalf of any other  
 25 companies?



1 A Geographical area.  
 2 Q What was your geographical area?  
 3 A Indiana. That's where I was at that time.  
 4 Q Were you living in Indiana at that point?  
 5 A Yes, ma'am.  
 6 Q Did MK Land Holdings end up getting sales reps  
 7 working under it?  
 8 A It did, one or two. I do not recall how much  
 9 business they were able to drum up.  
 10 Q Do you recall their names?  
 11 A No, ma'am.  
 12 Q Did you approach PCLS about working as a sales  
 13 representative or manager or did someone from  
 14 PCLS approach you?  
 15 A I do not recall, ma'am.  
 16 Q Who at PCLS was involved in negotiating this  
 17 independent contractor agreement with MK Land  
 18 Holdings?  
 19 A I used to talk to only two people at PCLS and  
 20 I do not recall who talked about the contract  
 21 and how much, but the two people were Marcus  
 22 Sowinski and Phil McHugh.  
 23 Q When did you first meet Marcus Sowinski?  
 24 A In 2008 or 2009. I'm not sure right now.  
 25 Q Where did you meet him?

1 A No, ma'am, it's very long back.  
 2 Q Why did they invite you to come see this  
 3 system?  
 4 A They were doing regular sales. I guess that's  
 5 why they invited me, because they saw the -- I  
 6 presumed they realized that we had a large  
 7 practice and it can be successful.  
 8 Q Did the Pain Managements Centers for Southern  
 9 Indiana ever end up doing a prescription  
 10 dispensing system in-house?  
 11 A No, ma'am.  
 12 Q Do you remember the name of the clinic where  
 13 you went to see the demonstration?  
 14 A No, ma'am.  
 15 Q When was the first time you spoke to Phil  
 16 McHugh?  
 17 A I do not recall the date and -- maybe 2008 or  
 18 '09, somewhere around that time. I don't  
 19 recall when.  
 20 Q What were the circumstances of you meeting Mr.  
 21 McHugh?  
 22 A I do not recall, ma'am. The only thing I have  
 23 a hazy memory and what I can put together is  
 24 that at Pain Management Centers of Southern  
 25 Indiana at that time urine drug testing cups

1 A Florida.  
 2 Q What were those circumstances of that meeting?  
 3 A While working for Pain Management Centers of  
 4 Southern Indiana, Marcus and Phil and the head  
 5 of the -- which I was given to understand at  
 6 that time a partner or doctor -- were setting  
 7 up a prescription dispensation in a  
 8 physician's office. And I was invited out  
 9 there to see how it works and that's how --  
 10 that's the first time I met Marcus Sowinski.  
 11 Q What do you mean by a prescription  
 12 dispensation system?  
 13 A When you go to a doctor's office, they write a  
 14 prescription to you and then you go to a  
 15 pharmacy and get it filled. So at that time  
 16 it was new that you have a pharmacy within the  
 17 clinic itself and you could dispense the  
 18 prescriptions right there and then.  
 19 Q Who invited you to come see this prescription  
 20 dispensing system?  
 21 A I'm hazy on how it happened and which one it  
 22 was, but I used to talk to only two people,  
 23 Marcus and Phil.  
 24 Q So you don't recall who invited you to go see  
 25 the system?

1 were being utilized as a source for immediate  
 2 qualitative results and that is something --  
 3 those cups were something Phil was selling. I  
 4 do not know how we got -- how he came to know  
 5 about me or who introduced us. So that is the  
 6 first time I met him and he assisted us in  
 7 procuring the cups for our clinic and doing --  
 8 guided the staff. He came and visited once to  
 9 guide us in how it should be done.  
 10 Q Just to confirm, when you say we, you're  
 11 talking about the Pain Management Centers ---  
 12 A Yes, ma'am.  
 13 Q Thank you, of Southern Indiana?  
 14 A Yes, ma'am.  
 15 Q Do you remember the year when Mr. McHugh came  
 16 and, as you described, showed your staff how  
 17 to use the cups at Pain Management Center?  
 18 A No, ma'am.  
 19 Q Do you know if Mr. McHugh was an owner of PCLS  
 20 at the time he came to the clinic with the  
 21 cups?  
 22 A From what I know, PCLS did not exist at that  
 23 time.  
 24 Q What's your understanding of when PCLS came  
 25 into existence?



1 A I don't remember, ma'am.  
2 Q Do you recall what you told him about your  
3 business relationship with Avicenna and Dr.  
4 Shah?  
5 A I do not remember, ma'am.  
6 Q When was the first time you told Mr. Sowinski  
7 about your business relationship with Dr.  
8 Masimore and Pain Management Solutions?  
9 A I do not remember, ma'am.  
10 Q Do you remember what you told Mr. Sowinski  
11 about your relationship with Pain Management  
12 Solutions and Dr. Masimore?  
13 A I do not remember, ma'am.  
14 Q Did you ever tell Mr. McHugh about your  
15 relationship with Pain Management Solutions or  
16 Dr. Masimore?  
17 A Him and Marcus Sowinski both.  
18 Q What do you remember telling Mr. McHugh and  
19 Mr. Sowinski about your business relationship  
20 with Pain Management Solutions and Dr.  
21 Masimore?  
22 A I do not remember, ma'am.  
23 Q What do you remember in telling them about  
24 your business relationships with Dr. Shah and  
25 Avicenna?

1 that practice before you entered into the  
2 independent contractor agreement?  
3 A I do not remember, ma'am.  
4 Q Do you remember talking to anybody else at  
5 PCLS about your business relationship with Dr.  
6 Masimore and his practice Pain Management  
7 Solutions?  
8 A That is before signing the contract?  
9 Q At any time.  
10 A Yes, I talked about it after I became a W2  
11 definitely with Joe Wiegel, with Paul Schmidt,  
12 with the senior vice president -- I don't  
13 remember his name now. I distinctly remember  
14 these.  
15 Q What conversations do you remember having with  
16 Joe Wiegel about your business relationship  
17 with Masimore and Pain Management Solutions?  
18 A I do not remember exactly what I said, ma'am.  
19 It's been a long way back.  
20 Q Do you remember generally what the  
21 conversation was about?  
22 A It will be conjecture.  
23 Q Do you remember how you came to be talking to  
24 Joe Wiegel about your business relationship  
25 with Dr. Masimore and Pain Management

1 A Can you go back to the previous question,  
2 please?  
3 Q Sure. I was asking: What do you remember  
4 telling Mr. Sowinski and Mr. McHugh about your  
5 business relationships with Pain Management  
6 Solutions and Dr. Masimore?  
7 A No, I do not remember. I got confused with if  
8 you were talking about Pain Management Centers  
9 of Southern Indiana.  
10 Q I'm sorry. Thank you for -- all the names  
11 sound the same to me.  
12 A Same here.  
13 Q I want to make sure I'm getting this right.  
14 Pain Management Solutions is Dr. Masimore's  
15 practice, correct?  
16 A Yes, ma'am.  
17 Q Do you believe that you told either Ms. McHugh  
18 or Mr. Sowinski about your relationship with  
19 Dr. Masimore and his practice before you  
20 became an independent contractor for PCLS?  
21 A I do not remember, ma'am. It's very long  
22 back.  
23 Q Same question as to Dr. Shah and Avicenna. Do  
24 you recall if you told Mr. McHugh or Mr.  
25 Sowinski about your business relationship with

1 Solutions?  
2 A No, ma'am.  
3 Q Do you recall the circumstances of how you  
4 came to talk to Paul Schmidt about your  
5 relationship with Masimore and Pain Management  
6 Solutions?  
7 A No, ma'am.  
8 Q Do you recall anything about your  
9 conversations with Mr. Schmidt on that topic?  
10 A No, ma'am.  
11 Q Then you mentioned the senior vice president.  
12 Do you recall how you came to be talking to  
13 that person about your relationship with  
14 Masimore and Pain Management Solutions?  
15 A No, ma'am.  
16 Q Did you also talk to Mr. Wiegel, Mr. Schmidt,  
17 and the senior VP about your business  
18 relationships with Avicenna and Dr. Shah?  
19 A That is what I've said, yes.  
20 Q I thought we were talking about Masimore and  
21 Pain Management Solutions, but were you ---  
22 A The both of them, ma'am.  
23 BY MR. CAUDILL:  
24 Objection.  
25 BY THE DEPONENT:

1 Yes, ma'am.

2 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:

3 Q Do you recall anything specific about your

4 conversations with Mr. Wiegel, Schmidt, or the

5 senior VP about Avicenna and Dr. Shah?

6 A No, ma'am.

7 Q Do you recall conversations with anyone at

8 PCLS about either Dr. Shah and his practice or

9 Dr. Masimore and his practice before you

10 became a W2 employee?

11 A Yes, because that was added to my employee

12 agreement that these practices were exempt

13 from the business.

14 Q Tell me what you mean by exempt from the

15 business.

16 A That I would continue to collect commission on

17 the practice, not only these, but there were

18 more who were already my clients. So that --

19 I believe I talked to both Marcus and Phil

20 about -- both Marcus and Phil about it.

21 Q Let's take a look at that employment agreement

22 since you brought it up.

23 BY MR. CAUDILL:

24 Kat, can we take a five-minute break?

25 BY MS. ARMSTRONG:

1 a W2 role?

2 A I do not recall, ma'am.

3 Q Was this something you asked for or something

4 the company proposed?

5 A I do not recall, ma'am.

6 Q Did your role at PCLS change when you became a

7 W2 employee?

8 A Yes, ma'am.

9 Q Tell us how it changed.

10 A I became in charge for all the 1099

11 independent contractors and it was to develop

12 more independent contractors.

13 Q Would that be all independent contractors

14 nationwide or limited to a specific territory?

15 A That was nationwide, ma'am.

16 Q What was your job title?

17 A Vice President, marketing, channel partners.

18 Q What does channel partners mean?

19 A Independent contractors.

20 Q Is that just another term for independent

21 contractors or does it have some specific

22 meaning?

23 A That is how it was termed at PCLS.

24 Q In addition to overseeing the independent

25 contractor sales force, did you take on any

1 Yes, of course.

2 (OFF THE RECORD)

3 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:

4 Q Mr. Kumar, are you ready to get started again?

5 A Yes, ma'am.

6 Q We took a short break and right before we

7 broke we had started to talk about your hiring

8 as a W2 employee for PCLS.

9 A Yes, ma'am.

10 Q How did that come about?

11 A I'm not sure of the question, ma'am.

12 Q Sure. How did you come to be hired as a W2

13 employee for PCLS?

14 A Being offered the job.

15 Q Who offered you the job?

16 A I do not remember who between the two it was.

17 Q I'm sorry, between ---

18 A Between Marcus Sowinski and Phil or both. I

19 do not recall who.

20 Q Do you recall the initial conversation with

21 either Phil or Marcus regarding your

22 transition to a W2 position with the company?

23 A I do not recall, ma'am.

24 Q Do you recall when you started talking to

25 either Marcus or Phil about transitioning into

1 additional roles or duties when you became a

2 W2 employee?

3 A Not for PCLS directly.

4 Q What do you mean by that?

5 A In addition to the task given to me PCLS was

6 as a vice president, channel partners for PCLS

7 -- that was the task that was assigned to me.

8 Q I asked you if you had taken on any other

9 roles and responsibilities and you said not

10 directly. What do you mean by not directly?

11 A I was still working with my own reps of MHS.

12 Q Was MHS a channel partner of PCLS?

13 A Yes, ma'am.

14 Q When did MHS become a channel partner of PCLS?

15 A It started as MK Land Holdings. When MK Land

16 Holdings transitioned to MHS, I do not recall.

17 Q So at some point in time, MK Land Holdings'

18 channel partnership transitioned into MHS'

19 channel partnership?

20 A Yes, ma'am.

21 Q What was the reason for that?

22 A I do not recall, ma'am.

23 Q Do you recall what year that occurred in?

24 A I do not recall, ma'am.

25 Q So in addition to your W2 responsibilities,

1 you still had responsibilities as channel  
2 partner through MHS, is that correct?  
3 A Yes, ma'am.  
4 Q Were you performing any other work for PCLS in  
5 any other capacity at the time you became a  
6 W2?  
7 A I'm not clear on the question, ma'am.  
8 Q Sure. Were you through any of your entities  
9 still providing billing services to PCLS --  
10 data entry? I'm sorry, I think you mentioned  
11 it was data entry.  
12 A I do not recall when data entry was taken in-  
13 house. I do not recall the time frame.  
14 Q Do you recall when you started doing data  
15 entry for PCLS?  
16 A It was -- as far as I remember -- I just want  
17 to make sure that if I'm not certain about  
18 something, you want me to answer it or you --  
19 or you would prefer me to say I do not know  
20 and I do not remember.  
21 Q I don't want you to speculate, but I also want  
22 you to try your best to give us ---  
23 A So I will let you know that I'm not certain  
24 absolutely. So I'm not absolutely certain  
25 when it was. It was around the end of -- it

1 A Every day other than the day I was traveling  
2 for some clients or on vacation.  
3 Q Sure. Was this like a Monday-through-Friday  
4 job?  
5 A Yes, ma'am.  
6 Q What were your typical hours worked?  
7 A Typical hours of 8:00 to 5:00.  
8 Q Then I think you mentioned you also traveled  
9 to see clients, is that correct?  
10 A Clients and reps because I was in charge for  
11 channel partners across the country. So I had  
12 to go and meet channel partners, go and meet  
13 their clients.  
14 (GOVERNMENT'S EXHIBIT NO. 4 MARKED)  
15 BY MS. ARMSTRONG:  
16 Let's take a look at the employment agreement  
17 we've marked Plaintiff's 4. Cathleen, would  
18 you mind?  
19 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
20 Q Take a moment and go over that, please. You  
21 mentioned before we broke that when you became  
22 a W2 employee certain accounts that you had  
23 worked as a sales rep or manager were exempted  
24 from the agreement, is that accurate?  
25 A Yes, ma'am.

1 was around 2010.  
2 Q How were you compensated as a W2 employee?  
3 What did you get paid?  
4 A It was in the contract. I do not remember  
5 exactly what it was.  
6 Q Did you have a base salary?  
7 A Yes, ma'am.  
8 Q You continued to collect commissions on  
9 collections on MHS accounts, is that correct?  
10 A Yes, ma'am.  
11 Q Do you remember if there were any other  
12 benefits to you in becoming a W2 employee for  
13 PCLS?  
14 A A regular benefit package that was for all  
15 employees and it was exactly as per contract.  
16 I do not remember what the contract says.  
17 Q When you transitioned into your W2 role, were  
18 you still living in Indiana?  
19 A No, I was -- I had moved to Charlotte at that  
20 time.  
21 Q As vice president of marketing, did you  
22 maintain at a presence at PCLS' offices or lab  
23 space?  
24 A Yes, ma'am.  
25 Q How often were you at the company location?

1 Q Tell me what you mean by that.  
2 A That if there's any business from them, I  
3 would continue to receive commission on those  
4 accounts.  
5 Q Are those the accounts that are listed on  
6 Schedule C of this employment agreement?  
7 A These are accounts that are listed, but this  
8 Pain Management Center of Wilmington was never  
9 an account. The others were possibly those  
10 that I was -- some of them were those that I  
11 was already working on. I'm not sure. I do  
12 not remember whether all of them were accounts  
13 already or not.  
14 Q Pain Management Solutions is Dr. Masimore's  
15 practice in Jasper, Indiana, is that correct?  
16 A Yes, ma'am.  
17 Q Is Dr. Shah's practice on this list?  
18 A It is not there on this list.  
19 Q But is it your understanding that Dr. Shah's  
20 practice was one of the accounts that MedTech  
21 Health Solutions would continue servicing as a  
22 channel partner?  
23 A Yes, ma'am.  
24 Q Going back to Page 2 ---  
25 A Possibly by this time his practice had closed.

1 Dr. Shah.  
 2 Q So when you stated earlier that the reason Dr.  
 3 Shah and Avicenna were not listed on Schedule  
 4 C could be that the practice had stopped  
 5 operating, that was speculation, correct?  
 6 A Yes, ma'am, I said it could be.  
 7 Q Going back to Page 2 of the employment  
 8 agreement which is Exhibit 4, there's a  
 9 Subparagraph C -- little C. Just take a  
 10 moment and read that for me to yourself. I  
 11 didn't mean for you to read it out loud. I'm  
 12 going to ask you some questions about it.

13 BY MS. OWEN:

14 Which exhibit?

15 BY MS. ARMSTRONG:

16 Four.

17 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:

18 Q Are you through?

19 A Yes, ma'am.

20 Q So Subparagraph C states, "For the period of  
 21 March 1, 2013, through May 31, 2013, it is  
 22 expected that Employee bring to a conclusion  
 23 any and all activities with such clients while  
 24 working in the capacity as owner of MHS," and  
 25 it's referring to the clients on Schedule C.

1 A No, ma'am.  
 2 Q Why not?  
 3 A I did not go word-by-word.  
 4 Q Do you know who drafted this agreement?  
 5 A I do not know who at PCLS drafted it.  
 6 Q If you flip to Page 10, who signed this  
 7 employment agreement on behalf of PCLS?  
 8 A Phil McHugh.  
 9 Q Keep flipping forward to -- it is Page 1 of  
 10 Schedule E kind of near the back.  
 11 A Yes, ma'am.  
 12 Q I'm paraphrasing here, but there's a paragraph  
 13 that indicates PCLS has adopted written  
 14 policies -- certain compliance policies for  
 15 its personnel. Were you ever provided with  
 16 any copies of written policies from PCLS?  
 17 A I don't recall.  
 18 Q There's also a sales and marketing standard of  
 19 conduct referenced in Schedule E. Can you  
 20 tell us what that is?  
 21 A It is part of the code of ethics, Schedule E.  
 22 Q Do you recall PCLS' sales and marketing  
 23 standard of conduct?  
 24 A Yes, ma'am.  
 25 Q Was a copy of the sales and marketing standard

1 By May 31, 2013, did MHS stop working with Dr.  
 2 Masimore's practice?  
 3 A Once I moved to Charlotte, the only work I was  
 4 effectively doing for them was payroll.  
 5 Q I appreciate that. I'm not talking about your  
 6 work for Dr. Masimore. But Schedules C lists,  
 7 it appears, several accounts of MHS and this  
 8 contract states that by May 31st of 2013 MHS  
 9 cease its activities related to Dr. Masimore's  
 10 practice, correct?  
 11 A Yes, ma'am.  
 12 Q Did that happen?  
 13 A No, ma'am.  
 14 Q Why not?  
 15 A It was my understanding that these -- these  
 16 clients will continue with MHS. That's why  
 17 PCLS continued paying for them all the while.  
 18 Q Did anyone at PCLS discuss this paragraph with  
 19 you?  
 20 A No, ma'am.  
 21 Q Did you read it prior to signing the  
 22 employment agreement?  
 23 A No, ma'am.  
 24 Q Did you read through the agreement generally  
 25 before signing it?

1 of conduct ever provided to you?  
 2 BY MR. CAUDILL:  
 3 Objection to the form.  
 4 BY THE DEPONENT:  
 5 I do not recall, ma'am.  
 6 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 7 Q Did you read through this Schedule E before  
 8 you signed the contract?  
 9 A I don't think so, ma'am.  
 10 Q Again, why did you not read through Schedule  
 11 E?  
 12 BY MR. CAUDILL:  
 13 Objection to the form. You can answer.  
 14 BY THE DEPONENT:  
 15 I have no answer to that, ma'am.  
 16 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 17 Q It does look like on the last page, Page 5,  
 18 that your signature appears here, is that  
 19 correct?  
 20 A Yes, ma'am.  
 21 Q Did your employment with PCLS ever come to an  
 22 end?  
 23 A In 2015.  
 24 Q Do you recall the date and the month in 2015?  
 25 A No, ma'am.

1 Dr. Johnson's meeting in Pennsylvania?

2 A Dr. Johnson wanted to know about how to set up

3 a laboratory in his office to do presumptive

4 testing. And since I had knowledge about

5 that, I was asked to go and advise him.

6 Q What is presumptive testing?

7 A Analyzer. Presumptive testing could be a

8 urine cup or an analyzer, ma'am.

9 Q Just to simplify it even more, what is

10 presumptive testing? What are you testing

11 when you refer to presumptive testing?

12 A Presumptive testing for urine toxicology.

13 Q Is presumptive testing qualitative or

14 quantitative?

15 A Qualitative.

16 Q Qualitative testing means you're looking for

17 what?

18 A Positives and negatives.

19 Q The presence of a substance?

20 A Or an absence of a substance.

21 Q Did ---

22 A Sorry. The qualification there is that it has

23 a lot of false-positives and false-negatives.

24 Q Presumptive testing does?

25 A Yes, ma'am, and it does not talk about

1 use in his or her practice?

2 A That is something a doctor could set up to use

3 in a -- in his or her practice to reduce the

4 cost or to reduce the number of confirmations

5 that they have to send for.

6 Q What do you mean by confirmations?

7 A Quantitative testing as you had specified.

8 Q What is involved in setting up an analyzer lab

9 in a physician's clinic?

10 A Three aspects are required. The first is a

11 license, the second is a director, and the

12 third is an analyzer.

13 Q Prior to meeting with Dr. Johnson, have you

14 had experience setting up analyzer labs in

15 physician practices?

16 A Yes, ma'am.

17 Q Tell me about that.

18 A For six months I was working with a company

19 called Clinical Lab Services whose job was to

20 set up laboratories in doctors offices -- set

21 up laboratories. They may or may not be in

22 doctors' offices.

23 Q Other than a doctor's office, where would you

24 find an analyzer lab?

25 A In the regular lab also there will be

1 metabolites.

2 Q Dr. Johnson was interested in learning more

3 about a lab to do presumptive testing. Did he

4 reach out to the company, to PCLS, about this?

5 A I was not working with PCLS that time. The --

6 the rep for Dr. Johnson was Elan Colen from

7 Florida and the lead came through him and

8 that's how I got roped in to talk to his

9 client about an analyzer.

10 Q When you say you weren't working at PCLS, you

11 mean you weren't working as a W2 employee at

12 that time?

13 A Yes, ma'am.

14 Q But you were working as a channel partner?

15 A I'm not certain about the time, but it appears

16 so.

17 Q Do you recall anything specific about what Mr.

18 Colen told you about Dr. Johnson's needs?

19 A No, I do not recall specifically what he told

20 me.

21 Q You mentioned analyzers. Tell us more about

22 analyzers. What is an analyzer?

23 A An analyzer is a lab equipment to do amino

24 acid testing.

25 Q Is it something that a doctor could set up and

1 analyzers.

2 Q When were you working for Clinical Lab

3 Solutions -- Solutions did you say?

4 A Clinical Lab -- I do not remember the exact

5 name of the company. It was based out of

6 California. This was four or five months in

7 2010 August to 2011, beginning, something like

8 that, ma'am.

9 Q Did you have any ownership interest in that

10 company?

11 A No, ma'am.

12 Q What specifically was your role with Clinical

13 Laboratory Services?

14 A To coordinate the setting up of a laboratory.

15 Q Prior to joining that company, Clinical Lab

16 Services, did you have any experience in

17 setting up analyzer labs?

18 A No, ma'am.

19 Q How did you get trained to do that?

20 A On-job training.

21 Q During your time with Clinical Laboratory

22 Services, about how many analyzer labs did you

23 work on setting up? Not to completion, just

24 how many analyzer lab projects were you

25 working on?

1 A I do not specifically remember the number, but  
 2 more than ten.  
 3 Q So I think you said that you got, to use your  
 4 phrase, roped in and went to go meet with Dr.  
 5 Johnson, is that correct?  
 6 A Yes, ma'am.  
 7 Q Tell me about that meeting with Dr. Johnson.  
 8 A We met Dr. Johnson at his clinic.  
 9 Q Was anyone else present when you met with Dr.  
 10 Johnson?  
 11 A I do not recall whether his manager was there  
 12 initially or he was there later.  
 13 Q Who was his manager?  
 14 A I do not recall the name, ma'am.  
 15 Q What specifically did you talk about in terms  
 16 of setting up an analyzer for Dr. Johnson when  
 17 you all met?  
 18 A I'm not clear on what you're looking for here.  
 19 Q Sure. How did you explain the analyzer lab  
 20 setup to Dr. Johnson?  
 21 A I explained the analyzer lab setup in the  
 22 similar fashion where I explained to you that  
 23 there are three aspects of the setting up of a  
 24 lab.  
 25 Q Did you have any conversations with Dr.

1 Marcus and Phil.  
 2 Q This is in February of 2011, is that correct?  
 3 A Yes, ma'am.  
 4 Q You reference that this is a follow-up on an  
 5 analysis of the current trend in CPT codes.  
 6 What are you referring to by current trend in  
 7 CPT codes?  
 8 A I not recall when changes happened, but this  
 9 could be that initially the physicians -- when  
 10 they were testing with a cup in their clinics,  
 11 they were getting paid up to \$200 and the  
 12 rules were changing, that if they need to get  
 13 paid more, they would have to put an analyzer.  
 14 Otherwise, if they would continue to do the  
 15 cup, it would be -- the paid amount to them  
 16 would be substantially lower.  
 17 Q When you refer to the rules changing, are  
 18 these the rules for reimbursement for ---  
 19 A Yes, ma'am, the CPT code and the related fee  
 20 schedule.  
 21 Q Generally, the use of cups or analyzers, are  
 22 those referred to as point-of-care testing?  
 23 A Yes, ma'am.  
 24 Q In this email you reference an idea where PCLS  
 25 could offer providers services relating to

1 Johnson before you went to meet with him?  
 2 A I do not recall talking to him ever before  
 3 that, ma'am.  
 4 Q Did you have, I guess what I would call, a  
 5 sales pitch in terms of why Dr. Johnson should  
 6 set up an in-house analyzer lab?  
 7 A I do not recall. I was not in the business of  
 8 selling labs to people.  
 9 Q But was there any financial upside to Dr.  
 10 Johnson for putting an analyzer in his  
 11 practice?  
 12 A I would assume yes.  
 13 BY MS. ARMSTRONG:  
 14 Let's take a little break if you all don't  
 15 mind. We've been going for a while. Let's do  
 16 ten minutes.  
 17 (OFF THE RECORD)  
 18 BY MS. ARMSTRONG:  
 19 Let's look at an email that I believe you  
 20 produced. It's Kumar-Email 28167 and we are  
 21 on Exhibit No. 12.  
 22 (GOVERNMENT'S EXHIBIT NO. 12 MARKED)  
 23 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 24 Q What does Exhibit 12 appear to be? (Tenders)  
 25 A (Upon Review) It's an email from myself to

1 setting up a moderate complexity lab, is that  
 2 correct?  
 3 A Yes, ma'am.  
 4 Q Tell me what you mean by moderate complexity  
 5 lab.  
 6 A There are there or four qualifications of a  
 7 laboratory. The lowest qualification is a  
 8 CLIA waived laboratory that any clinic can  
 9 have and any physician can be the director of  
 10 that laboratory. Then there is a moderate  
 11 complexity or a -- and a high complexity  
 12 laboratory and these have got specific  
 13 requirements. The major change -- the one  
 14 major change is that the director needs to be  
 15 a pathologist.  
 16 Q Would an analyzer lab be a moderate complexity  
 17 lab?  
 18 A These rules continue to change, ma'am, and it  
 19 could be a moderate or a high complexity lab  
 20 depending upon the analyzer.  
 21 Q Back in 2011 when you're writing this email,  
 22 are you talking about setting up analyzer  
 23 labs?  
 24 A Yes, and this came from my experience of  
 25 Clinical Laboratory Services. There I was --

1 A So we are -- like Millennium was funneling  
2 their -- clinics wanted an analyzer to be set  
3 up to Clinical Labs or to a company out of  
4 Texas who was providing the analyzer. So that  
5 -- Millennium became a feeder for them.  
6 Likewise, if we are sending an increasing  
7 number of clients to these people to -- they  
8 will respond to us a little faster because we  
9 are helping them getting a client.  
10 Q Did PCLS ever become a feeder into one of  
11 these companies like CLC or other vendors?  
12 A Never.  
13 Q Why not?  
14 A We did not pursue the setting up of analyzers  
15 aggressively.  
16 Q Why was that?  
17 A Basically because we needed to dedicate  
18 resources and we did not want -- that is again  
19 something that I have to -- again it's just a  
20 conjecture, but it never -- it was never the  
21 focus area of PCLS.  
22 Q That's all I'm just clarifying, that that is  
23 just conjecture at this point; you were not a  
24 party to any conversations about why the  
25 company was not pursuing setting up analyzers?

1 Q You say, "Dr. Johnson, great talking to you  
2 today." Did you have a phone call or a  
3 meeting with Dr. Johnson?  
4 A A phone call. The first time I met Dr.  
5 Johnson was with Phil.  
6 Q That came later, after the phone call?  
7 A Yes, ma'am.  
8 Q I'm trying to get a sense of the time line  
9 here. It appears that you're providing him  
10 some information about desktop analyzers and  
11 lab set-up, is that correct?  
12 A Yes, ma'am.  
13 Q You reference in the first paragraph "your  
14 kind of volume." What did you know at the  
15 time about Dr. Johnson's volume?  
16 A I don't recall exactly, but the information  
17 was from his rep, Elan Colen, that he does  
18 about 1,000 samples a month. That's what I  
19 recall right now, but I'm not certain.  
20 Q How does that compare to other PCLS customers  
21 back in this 2012 time frame?  
22 A That is a subjective question because it will  
23 depend only upon the number of clinics and  
24 providers and group you are. A larger group  
25 can have much more. A smaller group -- an

1 A I was not party to any conversation about  
2 setting up analyzers, only if a rep wanted any  
3 client -- if any client of a rep wanted to  
4 know about analyzer, the rep was told, "Hey,  
5 you can direct it to Manoj and he will send  
6 them the information." So PCLS was never  
7 directly involved.  
8 BY MS. ARMSTRONG:  
9 Let's turn to Exhibit 14. This is going to be  
10 Kumar-Email 27228.  
11 (GOVERNMENT'S EXHIBIT NO. 14 MARKED)  
12 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
13 Q Tell me when you're done looking at it.  
14 A Do you want me to read this one?  
15 Q Just skim it and ---  
16 A Okay, I'm ready, ma'am.  
17 Q You're ready, okay. Who is  
18 johnnyspot@atlanticbb.com ?  
19 A I have no idea, ma'am.  
20 Q The email is addressed to Dr. Johnson. Could  
21 that be an email you sent to Dr. Johnson?  
22 A Yes, ma'am.  
23 Q I think Dr. Johnson's first name is John, is  
24 that correct?  
25 A Yes, ma'am.

1 individual provider may have a 100, 150. So  
2 it's depending -- depending upon the size of  
3 the business.  
4 Q Would a customer that referred approximately  
5 1,000 samples a month to PCLS be considered a  
6 big customer?  
7 A Considered a big customer for any laboratory.  
8 Q In the last paragraph, you indicate that "the  
9 good part is that we can do all that for you  
10 at a very reasonable cost." Who is the we you  
11 were referring to?  
12 A It's figurative and it is quite like the email  
13 earlier where it is broken down -- the cost is  
14 almost nothing to the provider initially. It  
15 all gets phased out.  
16 Q I guess in the preceding paragraph you  
17 identified a number of tasks incidental to  
18 setting up the lab such as employing  
19 personnel, writing policy, serving as  
20 technical supervisor, etcetera, and then you  
21 indicate that "we can do all that for you,"  
22 right?  
23 A By we I meant once again figuratively the  
24 companies that I would introduce because he  
25 signed up agreements with Clinical Lab

1 Services to set up the lab for him. He wanted  
 2 to buy the -- they would provide the director.  
 3 They would set up the lab, that is policies  
 4 and procedures, it was certification.  
 5 Q What do you recall your involvement being with  
 6 Dr. Johnson after he signed up with CLC?  
 7 A After he signed up with CLC?  
 8 Q I think you just said he would sign up with  
 9 CLC or the vendor.  
 10 A At that stage, I did not know what -- what  
 11 involvement will I have. So my only intention  
 12 was to go and meet with him and explain to him  
 13 all that was required and present him these  
 14 contracts from other companies.  
 15 Q Were you providing him with options from  
 16 various companies or just CLC?  
 17 A I knew of only CLC that time.  
 18 Q At this time you were not longer working for  
 19 CLC?  
 20 A I was not working for CLC that time.  
 21 Q Why did Mr. McHugh come to this meeting with  
 22 you?  
 23 BY MR. CAUDILL:  
 24 Objection to form. You can answer.  
 25 BY THE DEPONENT:

1 Q Is it possible that he is one of Dr. Johnson's  
 2 administrative employees or staff?  
 3 A Could be.  
 4 Q Do you recall if you ever met or communicated  
 5 with Mr. Glenn about the analyzer?  
 6 A I communicated a couple of times because he  
 7 was the one who was responsible to get the  
 8 paperwork and money, etcetera, everything. So  
 9 he was my main person to contact.  
 10 Q When you met with Dr. Johnson, what was his  
 11 response to the information you provided about  
 12 setting up an in-house analyzer lab?  
 13 A He was very interested in setting it up.  
 14 Q Did he have questions about it?  
 15 A I don't recall, but he must have had questions  
 16 at that time, ma'am.  
 17 Q What happened after your initial meeting with  
 18 Dr. Johnson in terms of the analyzer lab set-  
 19 up?  
 20 A I don't distinctly recall, but I do know that  
 21 he signed up with the lab setting up company  
 22 who started his paperwork for the licensure.  
 23 He set up an agreement with me to pay me over  
 24 four installments for -- three or four  
 25 installments and I was supposed to get paid

1 I do not know why he came. Possibly because  
 2 the rep who had referred this account was a  
 3 part of the channel partners and Phil at that  
 4 time was in charge of marketing or everything.  
 5 I do not now. And maybe that is how they had  
 6 come to him and that's why he wanted to  
 7 participate in that meeting.  
 8 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 9 Q Again, that was all just conjecture, is that  
 10 correct?  
 11 A Yes, absolutely.  
 12 Q Did you invite Mr. McHugh to this meeting with  
 13 Dr. Johnson?  
 14 A I think it possibly is the other way around.  
 15 I do not know Dr. Johnson. Dr. Johnson has  
 16 been sent to me from PCLS.  
 17 Q Did you and Mr. McHugh have any conversations  
 18 about Dr. Johnson before you met with him in  
 19 2012?  
 20 A I don't remember, ma'am.  
 21 Q Does the name Steve Glenn sound familiar to  
 22 you?  
 23 A Say it again, ma'am.  
 24 Q Steve Glenn, is that familiar?  
 25 A I've forgotten the name.

1 three or four thousand dollars to help him get  
 2 this all together. We signed an agreement and  
 3 he -- I think he sent a first payment. After  
 4 that his payment did not come. So it's --  
 5 well, it was put in a stall.  
 6 Q During your first meeting with Dr. Johnson,  
 7 was there any discussion about him sending  
 8 samples to PCLS for confirmatory testing?  
 9 A No, ma'am.  
 10 Q That didn't come up at all during your initial  
 11 conversation?  
 12 A No, ma'am.  
 13 Q At the time you met with Dr. Johnson, was he a  
 14 customer of PCLS?  
 15 A I do not know, ma'am.  
 16 Q Was Elan Colen a sales rep for any other urine  
 17 diagnostic testing laboratories that you're  
 18 aware of?  
 19 A Please say it again.  
 20 Q Yes, I want to make sure I understand the  
 21 players. Elan Colen was a rep for PCLS, is  
 22 that correct?  
 23 A He was the rep of another channel partner.  
 24 Q Was he also a sales rep for any other urine  
 25 drug testing labs?



1 the contract between Dr. Johnson and MedTech  
 2 Healthcare Solutions?  
 3 BY MR. CAUDILL:  
 4 Objection.  
 5 BY THE DEPONENT:  
 6 I don't know.  
 7 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 8 Q Was Mr. McHugh an owner of MedTech Healthcare  
 9 Solutions?  
 10 A Sorry, say it again, ma'am.  
 11 Q Was Mr. McHugh ever an owner of MedTech  
 12 Healthcare Solutions?  
 13 A No, ma'am.  
 14 Q Was he ever employed by the company?  
 15 A No, ma'am.  
 16 Q Was he ever an agent for the company?  
 17 A No, ma'am.  
 18 Q Did this contract ever get signed to your  
 19 knowledge?  
 20 A Yes, ma'am. A signed copy was provided  
 21 earlier.  
 22 Q Who, if you recall, was the primary contact  
 23 with Diamond Diagnostics related to this  
 24 transaction?  
 25 A I don't recall the name, ma'am.

1 from John Johnson to Elan Colen, the third  
 2 paragraph, "But you guys really need to come  
 3 to the table with ways we can enhance this. I  
 4 would have expected that you would have known  
 5 what your competitors are doing." Do you know  
 6 what he's referring to?  
 7 A No, ma'am.  
 8 Q When you received this email, did you call Mr.  
 9 Colen to discuss it?  
 10 A I do not recall, ma'am.  
 11 Q Do you recall if you sent him an email in  
 12 response?  
 13 A I do not recall him sending this email.  
 14 Q If you flip to -- well, first looking at the  
 15 bottom of the page and then flipping over, it  
 16 looks like Elan Colen has sent an email to  
 17 John Johnson and it's starts on the second  
 18 page. "I understand you have been offered  
 19 financial compensation for these tests. We  
 20 would love to do the same for you as well."  
 21 Do you know what he's referring to there?  
 22 A No, ma'am.  
 23 Q At this point in time in January of 2013, do  
 24 you know whether or not Mr. Colen is still a  
 25 sales rep for a channel partner of PCLS?

1 Q I should ask a better question, I'm sorry.  
 2 Did you communicate with Diamond Diagnostics  
 3 regarding the purchase of the analyzer for Dr.  
 4 Johnson?  
 5 A I did.  
 6 Q Did Mr. McHugh also communicate with Diamond  
 7 Diagnostics regarding the purchase of the  
 8 analyzer for Dr. Johnson?  
 9 A I do not know if he talked to them and at what  
 10 length, but he introduced me because they had  
 11 equipment from Diamond Diagnostics. He knew  
 12 about them. I did not know about them.  
 13 Q When you say they, you mean PCLS?  
 14 A I mean Diamond -- I mean Diamond Diagnostics  
 15 and PCLS.  
 16 BY MS. ARMSTRONG:  
 17 Thank you. I'm going to mark Kumar-Email  
 18 27289 as Exhibit 20.  
 19 (GOVERNMENT'S EXHIBIT NO. 20 MARKED)  
 20 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 21 Q Does this appear to be an email that Elan  
 22 Colen forwarded to you in January of 2013?  
 23 (Tenders)  
 24 A (Upon Review) Yes, ma'am.  
 25 Q On the first page, going down to the email

1 A He was still a rep of a channel partner.  
 2 Q Let's talk about Dr. Nickels. Was Dr. Nickels  
 3 ever one of your accounts as a channel  
 4 partner?  
 5 A No, ma'am.  
 6 Q Do you know whose account he was?  
 7 A No, ma'am, I don't remember.  
 8 Q Did you ever have any conversations with Dr.  
 9 Nickels about setting up an in-house analyzer  
 10 lab?  
 11 A I may have had some conversations with him,  
 12 but I do not recall anything about him.  
 13 Q Nothing about him at all? What kind of doctor  
 14 was he? Do you remember?  
 15 A He was a pain doctor. In our conversations an  
 16 analyzer -- I really don't remember anything.  
 17 Q Do you remember where his practice was  
 18 located?  
 19 A Yes, ma'am. It's in Ohio. Maybe Columbus,  
 20 Ohio.  
 21 Q How did you come to speak with Dr. Nickels if  
 22 you ever did?  
 23 A I had met Dr. Nickels a few times. I've  
 24 spoken to him a few times. I do not recall if  
 25 he came to me as somebody who a clinical lab

1 was already talking to or through a rep of  
 2 PCLS. I do not recall, ma'am.  
 3 BY MS. ARMSTRONG:  
 4 I'm going to show you a document that I'll  
 5 mark as Exhibit 21. It's Sowinski 93910.  
 6 (GOVERNMENT'S EXHIBIT NO. 21 MARKED)  
 7 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 8 Q If you flip to the second page, it looks like  
 9 this is an email from you to Marcus Sowinski  
 10 and Philip McHugh in April 2012 and you state,  
 11 "As you are aware Phil is attempting to get  
 12 back Dr. John Nickels from Cleveland." What  
 13 did you mean by that statement? (Tenders)  
 14 A (Upon Review) That John Nickels was an  
 15 earlier client and Phil is trying to get him  
 16 back.  
 17 Q Do you know when he was a client?  
 18 A No, ma'am.  
 19 Q Do you know why Mr. McHugh is trying to get  
 20 him back?  
 21 A No, ma'am.  
 22 Q Do you recall why you sent this email to Mr.  
 23 Sowinski and Mr. McHugh?  
 24 A I don't remember, but from the email it  
 25 appears that he needs -- he's asking for EMR

1 BY THE DEPONENT:  
 2 No, ma'am, I'm not aware.  
 3 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 4 Q You write back to Marcus, "His lab is likely  
 5 to be up and running by mid June." Are you  
 6 referring to an in-house analyzer lab?  
 7 A Yes, ma'am.  
 8 Q You write, "It is expected that he would  
 9 switch to us at that stage or soon after."  
 10 What did you mean by that?  
 11 A That he will probably switch wherever he is at  
 12 -- I think he was with United Oral Fluid and  
 13 that he would switch to doing -- to go to PCLS  
 14 for his confirmations.  
 15 Q Mr. McHugh confirms, is that correct?  
 16 A I don't know what he confirms. He says, "Yes,  
 17 let's chat."  
 18 Q Was it ever specifically discussed with Mr.  
 19 Nickels that he would start referring samples  
 20 to PCLS in exchange for the in-house analyzer  
 21 lab set-up?  
 22 BY MR. CAUDILL:  
 23 Objection. You can answer.  
 24 BY THE DEPONENT:  
 25 I don't recall, ma'am.

1 integration. And for that, the clinics would  
 2 fill a form talking about the specifics of  
 3 their EMR so that HL7 interface can billed  
 4 between the LIS, which is Lab Information  
 5 System, and the EMR. So maybe that form has  
 6 come and I forwarded that.  
 7 Q Was that something that was in Marcus'  
 8 purview?  
 9 A At that stage, Marcus was actively involved in  
 10 the -- at the laboratory.  
 11 Q Marcus' response is, "Is Dr. Nickels still a,"  
 12 quote, "'priority'?" Do you know what he  
 13 meant by that?  
 14 A No, ma'am.  
 15 Q Did PCLS refer to any customers or client  
 16 accounts as priorities?  
 17 A I was not part of PCLS at this time. I really  
 18 do not know what he means.  
 19 Q Well, you were a sales rep for PCLS at this  
 20 time. While you were a sales rep, were you  
 21 aware of anyone at PCLS, whether other sales  
 22 reps or employees, referred to customers as  
 23 priorities?  
 24 BY MR. CAUDILL:  
 25 Objection to form. You can answer.

1 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 2 Q You don't recall, okay. Did you assist in  
 3 setting Dr. Nickels up with an analyzer in his  
 4 clinic?  
 5 A Very hazy. I have assisted him, but what  
 6 extent I really do not recall, ma'am.  
 7 Q Do you recall whether you set him up with CLS  
 8 or a similar vendor?  
 9 A I do not recall, but that's the only way to  
 10 move forward. It has to move forward that  
 11 way. I'm not technically qualified to set  
 12 policies and procedures and technical  
 13 assistance.  
 14 BY MS. ARMSTRONG:  
 15 I'm going to show you another document that  
 16 I'll mark as Exhibit 22. This is Kumar-Email  
 17 22421.  
 18 (GOVERNMENT'S EXHIBIT NO. 22 MARKED)  
 19 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 20 Q This looks like an email between you and Dr.  
 21 Nickels, is that correct, or a string of  
 22 emails? (Tenders)  
 23 A (Upon Review) Yes, ma'am.  
 24 Q In the middle of Page 1, there is an email  
 25 from what appears to be Dr. Nickels to Jay

1 Chambers. Who is Jay Chambers?  
 2 A I do not know, ma'am.  
 3 Q Dr. Nickels asked Mr. Chambers to send him  
 4 "current billing and collecting data on the  
 5 urine drug screens so I can discuss with Mr.  
 6 Kumar. He wants to meet to over the numbers."  
 7 Why did you want to meet with Mr. Nickels to  
 8 go over the collections and billing numbers?  
 9 BY MR. CAUDILL:  
 10 Objection. You can answer.  
 11 BY THE DEPONENT:  
 12 I'm hazy on the -- Dr. Nickels, but I believe  
 13 that he was sending his samples to United Oral  
 14 Fluids and it was known -- or the word-of-  
 15 mouth in the community was that United Oral  
 16 Fluid used to pay their physicians and -- this  
 17 was -- this was to see how much they are  
 18 paying him, compare it to what he's  
 19 collecting. I think this Mr. John must have  
 20 been his billing -- Mr. Chambers must have  
 21 been his billing people and they're sending  
 22 the report to how does it compare of what he's  
 23 collecting himself vis a vis what United Oral  
 24 Fluid was paying him.  
 25 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:

1 McHugh in November of 2012, is that correct?  
 2 (Tenders)  
 3 A (Upon Review) Yes, ma'am.  
 4 Q It looks like you were sharing with him an  
 5 email that you sent to Dr. Nickels, is that  
 6 correct?  
 7 A Yes, ma'am.  
 8 Q You indicate at the bottom of the email that  
 9 "you will plan to see him this week and see  
 10 how we can get all his samples instead of the  
 11 measly number he is sending right now." What  
 12 did you mean by that?  
 13 A What page is that, ma'am?  
 14 Q The first page, the bottom of the email, the  
 15 last paragraph.  
 16 A It means that he was sending a small number of  
 17 samples to PCLS at that time. I do not know  
 18 how much. And I was not his rep. His rep  
 19 must have told me how many samples he would  
 20 send.  
 21 Q If you were not his rep, why were you  
 22 interested in seeing "how we can get all his  
 23 samples"?  
 24 A I was not his rep, but I was assisting in  
 25 sending up the analyzer and doing a comparison

1 Q Is United Oral Fluids still in business?  
 2 A I have no idea, ma'am.  
 3 Q Do you know what happened to its owner Bill  
 4 Hughes?  
 5 A I've never talked with him or anything.  
 6 Q Let's see, going up on that page to Dr.  
 7 Nickels' email to you, he indicates he has  
 8 "\$8,410.75 in expenses that I need to be  
 9 reimbursed for per my agreement with Bill."  
 10 Do you know what he's talking about?  
 11 A I really do not recall. I really do not  
 12 recall much about Mr. Nickels.  
 13 Q Do you recall anything about an agreement Dr.  
 14 Nickels had with Mr. McHugh?  
 15 A I'm not privy to that agreement if there was  
 16 an agreement.  
 17 Q But you don't know anything about it, is that  
 18 your testimony?  
 19 A I do not recall. I really do not recall.  
 20 BY MS. ARMSTRONG:  
 21 I'm going to mark Kumar-Email 22429 as Exhibit  
 22 23.  
 23 (GOVERNMENT'S EXHIBIT NO. 23 MARKED)  
 24 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 25 Q This looks like an email from you to Mr.

1 for him of the analyzer, what he's getting vis  
 2 a vis what he was getting paid by United Oral  
 3 Fluid. So only if he sees that yes, United  
 4 Oral Fluid has been cheating him all this  
 5 while -- that he will not send them any more.  
 6 Q The we in "we can get all his samples" is  
 7 PCLS, is that correct?  
 8 A Yes, ma'am.  
 9 Q Did you get a response from Mr. McHugh to this  
 10 email?  
 11 A I do not recall, ma'am.  
 12 Q Do you recall if you ever talked to Mr. McHugh  
 13 about how PCLS could get all of Dr. Nickels'  
 14 samples?  
 15 A I don't recall, ma'am.  
 16 BY MS. ARMSTRONG:  
 17 I'm going to hand you another document. This  
 18 one is going to be Exhibit 23 -- 24. It is  
 19 Kumar-Email 22535.  
 20 (GOVERNMENT'S EXHIBIT NO. 24 MARKED)  
 21 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 22 Q It looks like this is an email from Dr.  
 23 Nickels to you in November of 2012 and he has  
 24 attached a document. The named attachment  
 25 looks like it was expenses for Manoj and the

1 last page appears to be the attachment. It  
 2 appears Dr. Nickels has sent to you basically  
 3 an invoice for \$14,777.52. Why is Dr. Nickels  
 4 asking you to pay him almost \$15,000?  
 5 BY MR. CAUDILL:  
 6 Objection to the characterization. You can  
 7 answer.  
 8 BY THE DEPONENT:  
 9 I really do not recall, ma'am.  
 10 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 11 Q In this email, he references, "Your last  
 12 payment of \$9,000 on 9-11-12" -- do you recall  
 13 paying Dr. Nickels \$9,000 in September of  
 14 2012?  
 15 A No, ma'am.  
 16 Q Do you recall if one of your entities paid Dr.  
 17 Nickels \$9,000 in September of 2012?  
 18 A Ma'am, I do not recall.  
 19 Q Do you have any recollection as to why you or  
 20 one of your entities would be paying Dr.  
 21 Nickels money?  
 22 A Ma'am, I don't recall anything about Dr.  
 23 Nickels.  
 24 Q Do you recall whether or not Dr. Nickels  
 25 eventually got an analyzer placed in an in-

1 Q Subject Jay Nickels, I assume that's Dr. John  
 2 Nickels?  
 3 A Yes, ma'am.  
 4 Q "The expense till date has been approximately  
 5 \$4,000." Do you know what that's in relation  
 6 to?  
 7 A I do not recall, but it specifies here what it  
 8 is for.  
 9 Q Great and let's go through that. Two thousand  
 10 seven hundred and twenty six for COLA. What  
 11 is COLA?  
 12 A That is the licensure authority.  
 13 Q Did you pay money to COLA on behalf of Dr.  
 14 Nickels?  
 15 A I do not recall, ma'am.  
 16 Q What about 276 for API? What is API?  
 17 A American Proficiency Institute, once again  
 18 towards setting up of the laboratory.  
 19 Q Did you pay \$276 to API?  
 20 A Ma'am, I really do not remember.  
 21 Q "Seven hundred and fifty for CLC first  
 22 installment and 120 for advertisement."  
 23 A Yes, ma'am. That's the contract he signed  
 24 with CLC.  
 25 Q The contract who signed with CLC?

1 house lab in his practice?  
 2 A I think he did and that I'm corroborating from  
 3 the billing reports.  
 4 Q I'm sorry?  
 5 A I think he did and that -- when I say that,  
 6 I'm corroborating that from the billing  
 7 reports that have been presented.  
 8 Q Do you think Dr. Nickels paid anything towards  
 9 that analyzer?  
 10 A The analyzer was on a per-click. So he's  
 11 paying ABS on this which is per sample, he has  
 12 written here.  
 13 Q Were you or any of your entities reimbursing  
 14 Dr. Nickels for what he was paying for the  
 15 analyzer?  
 16 A I do not recall, ma'am.  
 17 BY MS. ARMSTRONG:  
 18 I'll show you another document I'll mark as  
 19 Exhibit 25. It's Kumar-Email 22437.  
 20 (GOVERNMENT'S EXHIBIT NO. 25 MARKED)  
 21 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 22 Q This looks like an email from you to Mr.  
 23 McHugh sent April 30, 2012, is that correct?  
 24 (Tenders)  
 25 A (Upon Review) Yes, ma'am.

1 A Dr. Nickels to set up the laboratory.  
 2 Q "The next envisaged expenditure is another  
 3 2,000 for CLC." Do you recall MK Land  
 4 Holdings making payments directly to CLC?  
 5 A I do not remember, ma'am.  
 6 Q I should ask it in a better way. Do you  
 7 recall MK Land Holdings making payments to CLC  
 8 on behalf of Dr. Nickels?  
 9 A Ma'am, I do not remember.  
 10 Q Do you recall Dr. Nickels' clinic name?  
 11 A Sorry, say it again, ma'am.  
 12 Q I'm sorry?  
 13 A Say it again, the question.  
 14 Q Do you recall the name of Dr. Nickels' clinic?  
 15 A No, ma'am.  
 16 Q Does Cleveland Back and Pain sound familiar?  
 17 A It sounds familiar.  
 18 BY MS. ARMSTRONG:  
 19 I'm going to show you -- I'll mark this as 26.  
 20 It's three pages. These I believe we obtained  
 21 pursuant to one of our Rule 45 subpoenas to  
 22 the financial institution. So they don't have  
 23 a Bates number on them.  
 24 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 25 Q Mr. Kumar, I'll represent there are more

1 checks that I'm going to show you, but in  
 2 order to move along I'll show you a couple  
 3 right now.  
 4 A Yes, ma'am.  
 5 BY MR. CAUDILL:  
 6 Can I just clarify something real quick?  
 7 BY MS. ARMSTRONG:  
 8 Yes.  
 9 BY MR. CAUDILL:  
 10 When you said yes, ma'am, a second ago to her  
 11 representation that there are more checks,  
 12 that wasn't you answering a question about  
 13 whether there were more ---  
 14 BY THE DEPONENT:  
 15 (Negative nod).  
 16 BY MR. CAUDILL:  
 17 Okay, I just wanted to make sure that that was  
 18 clear.  
 19 (GOVERNMENT'S EXHIBIT NO. 26 MARKED)  
 20 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 21 Q Again, Mr. Kumar, I'll represent this is a  
 22 sampling of checks. I'm not asking you to  
 23 agree or disagree with me on that. The first  
 24 document appears to -- the first page of  
 25 Exhibit 26, is that a check issued by MK Land

1 A Yes, ma'am.  
 2 Q The third check, MK Land Holdings to CLC, what  
 3 is the amount?  
 4 A Thirteen hundred dollars.  
 5 Q What's the memo?  
 6 A Cleveland, December.  
 7 Q Did you sign that?  
 8 A Yes, ma'am.  
 9 Q Do you recall why MK Land Holdings issued any  
 10 of these three checks to CLC?  
 11 A I do not recall.  
 12 BY MS. ARMSTRONG:  
 13 Let's do Exhibit 27.  
 14 (OFF THE RECORD)  
 15 BY MS. ARMSTRONG:  
 16 All right, let's take an hour.  
 17 (OFF THE RECORD)  
 18 (GOVERNMENT'S EXHIBIT NO. 27 MARKED)  
 19 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 20 Q Mr. Kumar, we took a break and we're now on  
 21 the record. I'm going to try to get through  
 22 some things as quickly as I can. I'll show  
 23 you what I marked as Exhibit 27. Is this a  
 24 check from MK Land Holdings written to John  
 25 Nickels? (Tenders)

1 Holdings, LLC?  
 2 A Yes, ma'am.  
 3 Q Payable to who?  
 4 A CLC.  
 5 Q What's the amount?  
 6 A Thirteen hundred dollars.  
 7 Q The memo says, "October for Cleveland," is  
 8 that correct?  
 9 A Yes, ma'am.  
 10 Q Do you recall why you were paying CLC for  
 11 Cleveland Clinic?  
 12 A I do not recall, ma'am.  
 13 Q Cleveland Back and Pain, I'm sorry.  
 14 BY MR. CAUDILL:  
 15 Objection to the characterization.  
 16 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 17 Q The second page of that document is another  
 18 check from MK Land Holdings to CLC, is that  
 19 correct?  
 20 A Yes, ma'am.  
 21 Q Another thirteen hundred dollars?  
 22 A Yes, ma'am.  
 23 Q What does the memo say?  
 24 A Cleveland Back and Pain, November.  
 25 Q Is that your signature?

1 A (Upon Review) Yes, ma'am.  
 2 Q In the amount of \$3,000?  
 3 A Yes, ma'am.  
 4 Q Is that your signature?  
 5 A Yes, ma'am.  
 6 Q Do you recall what this check was for?  
 7 A No, ma'am.  
 8 Q Flip the next page. This appears to be a  
 9 check from MK Land Holdings payable to John  
 10 Nickels, is that correct?  
 11 A Yes, ma'am.  
 12 Q This one is for twenty-five hundred dollars?  
 13 A Yes, ma'am.  
 14 Q Is that your signature?  
 15 A Yes, ma'am.  
 16 Q Do you recall why you made this payment ---  
 17 A No, ma'am.  
 18 Q --- or why you -- I apologize -- why MK Land  
 19 Holdings made this payment to John Nickels?  
 20 A No, ma'am.  
 21 (GOVERNMENT'S EXHIBIT NO. 28 MARKED)  
 22 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 23 Q I'm going to hand you what I've marked as  
 24 Exhibit 28. This is a check from Alternative  
 25 Biomedical Support, Inc. What is Alternative

1 Biomedical Support, Inc?

2 A This is the company that provided analyzers on

3 per-click basis.

4 Q This is a check written from Alternative

5 Biomedical to you personally, is that correct?

6 A Yes, ma'am.

7 Q In the amount of \$1,000?

8 A Yes, ma'am.

9 Q What does the memo say?

10 A "Cleveland signed CPS agreement, EXP."

11 Q What is a CPS agreement?

12 A I do not know, ma'am.

13 Q Do you know why you received \$1,000 from

14 Alternative Biomedical Support?

15 A No, ma'am.

16 Q Do you not remember or do you not ---

17 A I do not remember at all.

18 (GOVERNMENT'S EXHIBIT NO. 29 MARKED)

19 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:

20 Q Thank you. Okay, I'm going to hand you

21 Exhibit 29. This appears to be a bank

22 statement, is that correct? (Tenders)

23 A (Upon Review) Yes, ma'am.

24 Q The statement period appears to be April 17,

25 2012, through May 15, 2012, is that correct?

1 A For a short while, yes.

2 Q Do you recall when about he was a customer?

3 A No, ma'am.

4 Q Was he one of your accounts as a channel

5 partner?

6 A He was not initially my account. It was -- if

7 I remember, it was a United Oral Fluid account

8 and then I got him. Once PCLS left United

9 Oral Fluid, then I went and met him and got

10 him.

11 Q Did PCLS have a business relationship with

12 Universal Oral Fluid at some point?

13 A I have no idea, ma'am.

14 Q When you say he left UOFL, he wasn't yours and

15 then he came to PCLS, can you explain that?

16 A He was sending samples earlier to United Oral

17 Fluid is what I mean to say.

18 Q Thank you. Did Dr. Jayachandran sign a

19 promissory note for a \$50,000 loan?

20 A Yes, ma'am.

21 Q I'm going to hand you Exhibit 30. Do you see

22 that promissory note on Page 30? (Tenders)

23 A (Upon Review) Yes, ma'am.

24 Q What is M Holdings, LLC?

25 A This was one of the companies that Phil owned.

1 A Yes, ma'am.

2 Q Is this a statement from your account?

3 A Yes, ma'am.

4 Q If you will go down to the deposits and

5 additions section, you will see an entry on

6 May 2nd, federal wire credit. It appears that

7 on that date Mr. McHugh wired you \$10,000, is

8 that correct?

9 A Yes, ma'am.

10 Q What was that for?

11 A I don't recall, ma'am.

12 BY MS. ARMSTRONG:

13 I think this is going to be Exhibit 30.

14 (GOVERNMENT'S EXHIBIT NO. 30 MARKED)

15 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:

16 Q Switching gears, we talked briefly about a

17 doctor by the name of Dr. Jayachandran.

18 A Yes, ma'am.

19 Q Do you recall that?

20 A Yes, ma'am.

21 Q Who is Jayachandran?

22 A A psychiatrist or psychologist in Northern

23 Indiana.

24 Q Northern Indiana, okay. Was he a customer of

25 PCLS at the time?

1 Q What did that company do or what was its

2 business?

3 A I do not know, ma'am.

4 Q Do you know when that company was set up?

5 A No, ma'am.

6 Q Do you have any ownership interest in that

7 company?

8 A No, ma'am.

9 Q Do you know why M Holdings, LLC, was lending

10 Dr. Jayachandran \$50,000?

11 A Dr. Jayachandran wanted to buy an analyzer and

12 he wanted to borrow money and he agreed to pay

13 a high rate of interest for that.

14 Q Were you involved in discussing that loan with

15 Dr. Jayachandran?

16 A Yes, ma'am.

17 Q Who else, if anyone, was involved in

18 discussing that loan with Dr. Jayachandran?

19 A Only myself.

20 Q Was Mr. McHugh involved in discussing that

21 loan with Dr. Jayachandran?

22 A No, ma'am.

23 Q Did Mr. McHugh know you were involved in

24 discussing the loan with Dr. Jayachandran?

25 A I believe so because I asked him to loan the

1 money at a good rate of interest.  
 2 Q Whose idea was the loan?  
 3 A I'm not clear on the question.  
 4 Q Did Dr. Jayachandran ask for a loan or did you  
 5 offer him a loan?  
 6 A He asked for a loan.  
 7 Q How did he come to ask for a loan?  
 8 A During our conversations when we had talked  
 9 about the analyzer, he shared with me that he  
 10 was already in great debt and he did not have  
 11 the money and if he can get a loan, then he  
 12 would like to do it.  
 13 Q What do you recall about the debt that Dr.  
 14 Jayachandran was in while you guys was  
 15 discussing the analyzer?  
 16 A I do not know the particulars, ma'am.  
 17 Q Do you know the amount of the debt he was in?  
 18 A No, ma'am.  
 19 Q Did you do anything to vet Dr. Jayachandran's  
 20 ability to make payments on the loan to pay  
 21 back the loan?  
 22 A Say it again, ma'am.  
 23 Q Sure. Did you do anything to vet Dr.  
 24 Jayachandran's ability to pay the loan back?  
 25 A I have not understand what you want to ask me.

1 A I do not remember the date, ma'am.  
 2 BY MS. ARMSTRONG:  
 3 I'll show you what I have marked as Exhibit --  
 4 let's call this 31, please.  
 5 (GOVERNMENT'S EXHIBIT NO. 31 MARKED)  
 6 DIRECT EXAMINATION RESUMED BY MS. ARMSTRONG:  
 7 Q Does this appear to be a check from Dr.  
 8 Jayachandran to Silent Storm Holdings?  
 9 (Tenders)  
 10 A (Upon Review) Yes, ma'am.  
 11 Q What's the amount of the check?  
 12 A Fifty thousand.  
 13 Q What date was it written on?  
 14 A December 20th.  
 15 Q In 2014?  
 16 A Twenty-fourteen, yes, ma'am.  
 17 Q Thank you. What's the memo?  
 18 A Repayment of loan.  
 19 Q Do you believe this is a check representing  
 20 Dr. Jayachandran's repayment of the loan from  
 21 M Holdings, LLC?  
 22 A Yes, ma'am.  
 23 Q Do you know why he wrote the check to Silent  
 24 Storm Holdings?  
 25 A I do not know, ma'am.

1 Q Before negotiating this loan with Dr.  
 2 Jayachandran or at any time during the  
 3 negotiations of this loan, did you do any sort  
 4 of research or due diligence to determine  
 5 whether or not he would actually be able to  
 6 pay the loan back?  
 7 A No, I did not.  
 8 Q Did you ask him to see any sort of bank  
 9 statements or personal financial statements?  
 10 A No, I did not.  
 11 Q Did you ask him to provide information about  
 12 any of his outstanding debt at that time?  
 13 A No, but I made him personally guarantee the  
 14 loan.  
 15 Q Who was the loan named to? Was it made to Dr.  
 16 Jayachandran or to a practice?  
 17 A I do not recall, ma'am.  
 18 Q What was the source of the funds for the loan?  
 19 A Twenty-five thousand Phil put and twenty-five  
 20 I put.  
 21 Q Why would you put in 25,000?  
 22 A Getting a good return.  
 23 Q Did Dr. Jayachandran pay back the loan?  
 24 A Yes, ma'am.  
 25 Q When did he pay the loan back?

1 Q Do you recall the terms of the loan and  
 2 specifically when repayment was due from Dr.  
 3 Jayachandran?  
 4 A I do not recall.  
 5 Q If we look at the promissory note, Section 1 -  
 6 - I'm back to Exhibit 30, please -- "repayment  
 7 shall be made in full within one calendar year  
 8 from the agreement date or date of receipt of  
 9 funds, whichever is later."  
 10 A Uh-huh (affirmative).  
 11 Q So this agreement, it appears from your email,  
 12 was signed on August 24th of 2014, is that  
 13 correct?  
 14 A Yes, ma'am.  
 15 Q The loan wasn't due and payable until August  
 16 of 2015, is that correct?  
 17 A Yes, ma'am.  
 18 Q Do you know why Dr. Jayachandran paid it  
 19 early?  
 20 A Because he was asked to pay it back.  
 21 Q Who asked to pay him back?  
 22 A I think the lab did not like that the loan had  
 23 been given and they asked Phil to get it back.  
 24 Q What lab did not like ---  
 25 A PCLS.

1 Q Thank you. Who is the they you're referring  
2 to?  
3 A I'm sorry, I do not get that.  
4 Q You said they asked ---  
5 A The lab. I do not know who in the lab.  
6 Q Did you have any conversations with anyone at  
7 PCLS about the loan to Dr. Jayachandran before  
8 it was made?  
9 A No, ma'am.  
10 Q With the exception of Phil McHugh, did you  
11 have any conversations with anyone at PCLS  
12 before the loan to Dr. Jayachandran was made?  
13 A No, ma'am.  
14 Q Do you know if, with the exception of Phil  
15 McHugh, anyone at PCLS knew about the loan to  
16 Dr. Jayachandran before it was made?  
17 A I have no idea.  
18 Q Did Dr. Jayachandran ever pay any interest on  
19 the loan?  
20 A This time I don't think he's paid -- he has  
21 paid 50,000, just three months.  
22 Q Did anyone ever go after him for the interest  
23 owed on those three months?  
24 A I have no idea, ma'am.  
25 Q You have not personally ---

1 clients.  
2 Q What do you mean PCLS had exited its  
3 relationship with United Oral Fluids?  
4 A From what I understand, PCLS and -- was no  
5 longer taking samples from United Oral Fluids.  
6 Q When was PCLS taking samples from United Oral  
7 Fluids?  
8 A Before exiting. I do not know the dates.  
9 Q Do you know why PCLS was taking samples ---  
10 A No, ma'am.  
11 Q --- from United Oral Fluids?  
12 A No, ma'am.  
13 Q Do you know why PCLS stopped taking samples  
14 from United Oral Fluids?  
15 A No, ma'am, I have no idea.  
16 Q Do you know when Dr. Jayachandran stopped  
17 sending samples to PCLS?  
18 A No, ma'am.  
19 Q Is it you don't know or you don't remember?  
20 A I do not know.  
21 Q As a sales rep, is that something you would  
22 typically know, when one of your customers  
23 stops sending samples to the lab?  
24 A You would know, yes.  
25 Q Is that something that you tracked as a

1 A No.  
2 Q At the time the loan was made, was Dr.  
3 Jayachandran a current customer of PCLS?  
4 A He was.  
5 Q Do you know how long he had been referring to  
6 PCLS before the loan was made?  
7 A I do not recall, ma'am. Not very long. I do  
8 not recall how long.  
9 Q Do you remember who the sales rep was?  
10 A He was with UOFL, United Oral Fluid, and after  
11 -- after that MHS got him.  
12 Q Who was his PCLS sales representative?  
13 A MHS is a channel partner.  
14 Q Had you gone to see Dr. Jayachandran before  
15 you negotiated this loan with him?  
16 A Please say it again, ma'am.  
17 Q Sure. Had you gone to see Dr. Jayachandran  
18 before you negotiated this loan?  
19 A Yes.  
20 Q In your capacity as a sales rep?  
21 A I think this is when PCLS had exited from its  
22 relationship or -- with United Oral Fluids and  
23 at that time, the list of clients that United  
24 Oral Fluid had -- so that was distributed and  
25 whoever was in the area went and met those

1 channel partner?  
2 A I did, but that time once the loan was  
3 recalled and PCLS had made a conscious  
4 decision to end the relationship with that  
5 clinic and they returned the -- whatever money  
6 they got for the testing of the samples from  
7 the government as well.  
8 Q Who at PCLS made a conscious decision to stop  
9 the relationship with Jayachandran?  
10 A I do not know, ma'am.  
11 Q How do you know that happened? What is the  
12 source of that information?  
13 A I do not recall who said that, but it  
14 happened.  
15 Q Did you ever discuss with Dr. Jayachandran  
16 whether he would be expected to send samples  
17 to PCLS because of the loan you were making?  
18 A No, ma'am.  
19 Q You recall that you did not have that type of  
20 discussion?  
21 A Yes, ma'am.  
22 Q Are you currently involved in any business  
23 ventures with McHugh?  
24 A I have invested in a credit card processing  
25 company with him.



1 Mr. Kumar, I think that is everything I have.  
2 I appreciate your patience with me today. I  
3 know we've talked about reconvening at a later  
4 date. Do you all want to go ahead and start  
5 questioning?

6 BY MR. CAUDILL:

7 Can we go off the record for a second?

8 (OFF THE RECORD)

9 BY MR. CAUDILL:

10 So thank you, Kat. Mr. Kumar, my name is Bill  
11 Caudill for the record. We met earlier.  
12 Thank you for taking time to be here today.  
13 As we were just discussing off the record, in  
14 lieu of asking you a series of questions that  
15 may take us past 4:00, which I understand to  
16 be sort of the hard stop for the convenience  
17 of folks here, I'm going to submit written  
18 questions to your counsel for you to review  
19 and answer under oath, and I will do that in  
20 the very near future. And so we'll hold this  
21 open for the purpose of me doing that and I  
22 think that's it.

23 BY MS. ARMSTRONG:

24 I think that makes sense and certainly no  
25 prejudice to the government in the event we

1 needed to ask any follow-up.

2 BY MR. CAUDILL:

3 I'll stipulate to that.

4 BY MS. ARMSTRONG:

5 Thank you.

6 BY MS. OWEN:

7 The one clarification I would like to make is  
8 I know that Mr. Kumar is going to be traveling  
9 out of the country in a period of time, so I  
10 think that we can probably coordinate answers  
11 via email. We can have communications, but in  
12 case we would need to notarize anything, it  
13 may take a little bit ---

14 BY MR. CAUDILL:

15 What is the time frame associated with your  
16 travel, Mr. Kumar?

17 BY THE DEPONENT:

18 I'm leaving on the 3rd or the 4th of November  
19 to India and I'll be back on the -- November  
20 20th.

21 BY MR. CAUDILL:

22 I will have questions to you, Missy, either  
23 Monday or Tuesday.

24 BY MS. OWEN:

25 Okay.

1 BY MR. CAUDILL:

2 And I don't think that they will be  
3 voluminous. So fingers crossed we could  
4 resolve it before he departs.

5 BY MS. OWEN:

6 Okay.

7 BY MS. ARMSTRONG:

8 I think certainly if we had to continue this  
9 after November 20th but before his positive  
10 motions, we're agreeable to that. I know we  
11 have formal close of discovery on the 20th,  
12 but ---

13 BY MR. CAUDILL:

14 With respect to this deposition, we would  
15 stipulate to that, sure.

16 BY MS. ARMSTRONG:

17 Thank you.

18 (PROCEEDINGS ADJOURNED AT APPROXIMATELY 3:35 P.M.)

CERTIFICATE

I, Mai-Beth Ketch, CVR-M, CCR, Court Reporter  
and Notary Public, do hereby certify that the  
foregoing is an accurate transcript of the  
deposition of Manoj Kumar, taken by me and  
transcribed under my supervision.

I further certify that I am not financially  
interested in the outcome of this action, a  
relative, employee, attorney or counsel of any of  
the parties, nor am I a relative or employee of  
such attorney or counsel.

This is the 29th day of October, 2020.

MAI-BETH KETCH, CVR-M, CCR

Notary Public No.: 19981410006

(The foregoing certification of this transcript  
does not apply to any reproduction of the same by  
any means, unless under the direct control and/or  
supervision of the certifying reporter.)

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## MSJ Exhibit 72

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
3                   CHARLOTTE DIVISION

4                   UNITED STATES OF AMERICA                   )  
5                   ex rel. TARYN HARTNETT, and                   )  
6                   DANA SHOCHED,                   )  
7                   Plaintiffs,                   )  
8                   -v-                   ) CIVIL FILE NO.  
9                   PHYSICIANS CHOICE LABORATORY                   ) 3:17-CV-37  
10                   SERVICES, DOUGLAS SMITH,                   ) (CONSOLIDATED WITH  
11                   PHILIP McHUGH and                   ) CIVIL FILE  
12                   MANOJ KUMAR,                   ) NO. 3:17-CV-46)  
13                   Defendants.                   )

14                   The videotaped deposition upon oral  
15                   examination of GREGORY SCOTT MASIMORE, M.D., a witness  
16                   produced and sworn before me, Julie A. Nicholson, RPR,  
17                   CRR, Notary Public in and for the County of Hamilton,  
18                   State of Indiana, taken on behalf of the Plaintiffs at  
19                   the offices of Dentons Bingham Greenebaum, LLP, 2700  
20                   Market Tower, 10 West Market Street, Indianapolis,  
21                   Indiana, on September 25, 2020, at 10:04 a.m.,  
22                   pursuant to the Federal Rules of Civil Procedure.

23                   STEWART RICHARDSON & ASSOCIATES  
24                   Registered Professional Reporters  
25                   One Indiana Square, Suite 2425  
                 Indianapolis, IN 46204  
                 (317)237-3773

1 have?

2 A Two currently.

3 Q Who are those?

4 A They're medical assistants named Lori -- Lori  
5 Hewitt and Kameko Fowler.

6 Q Is Pain Management Solutions, as the name would  
7 imply, a pain management practice?

8 A Yes, it is.

9 Q Could you just generally tell me what a pain  
10 management practice is?

11 A I see patients on a regular basis and follow their  
12 medical management, as well as injections and try  
13 to mitigate their pain. I also do -- treat  
14 addiction.

15 Q Do you have an estimate of how many patients per  
16 month you see?

17 A My current practice is about 25 patients a day from  
18 Tuesdays through Thursdays. I see about 25  
19 patients a day.

20 Q Fair enough. Where did you work prior to Pain  
21 Management?

22 A I worked for another physician. It was called Pain  
23 Management of Southern Indiana.

24 Q Was that Dr. Tiwari's practice?

25 A Dr. Kamal Tiwari, correct.

1 Q Did you also work with a Dr. Yunus Shah there?

2 A I did. Not -- we worked independently. We both  
3 worked for Dr. Tiwari, but I did not actually work  
4 with Dr. Shah, per se.

5 Q Why did you leave Dr. Tiwari's practice?

6 MR. GAERTE: Mr. Johnson, good morning. My  
7 name is Michael Gaerte. We spoke off record. I  
8 represent Dr. Masimore. At this point, I'm going  
9 to interject and object to the question and  
10 instruct Dr. Masimore to not answer that question  
11 based upon his Fifth Amendment privilege to avoid  
12 incrimination.

13 Q Are you relying on the advice of your counsel to  
14 decline to answer that question?

15 A I am.

16 Q Do you have an office manager at Pain Management  
17 Solutions?

18 A I do not currently.

19 Q Did you have one previously?

20 A Yes.

21 Q Who was that?

22 MR. GAERTE: Same objection, Mr. Johnson, and  
23 same instruction to my client. I can reincorporate  
24 the longer record. I don't think you need me to.

25 MR. JOHNSON: That's fine.

1 MR. JOHNSON: Sure.

2 MR. GAERTE: -- then I'll interject and  
3 instruct him to answer. Let's just do it that way.  
4 And that puts the burden on me. Is that cool?

5 MR. JOHNSON: Fair enough.

6 MR. GAERTE: Okay.

7 MR. JOHNSON: Yeah. And again, I'm not going  
8 to quibble over the form --

9 MR. GAERTE: No, no, no.

10 MR. JOHNSON: -- of how he's --

11 MR. GAERTE: You've been --

12 MR. JOHNSON: -- invoking the Fifth --

13 MR. GAERTE: Of course.

14 MR. JOHNSON: -- but, yeah, just as long as  
15 it's clear he's invoking the Fifth to the question.  
16 And it's probably easier, yeah, just to have him --  
17 you object and him say that and then we --

18 MR. GAERTE: One less step. I agree.

19 MR. JOHNSON: -- move on.

20 MR. GAERTE: Yes, sir.

21 Q Okay. We'll start fresh.

22 Did you ever pay Manoj Kumar a salary?

23 A I invoke my Fifth Amendment rights.

24 Q Did Pain Management Solutions ever pay Manoj Kumar  
25 a salary?

1 A I invoke my Fifth Amendment rights.

2 Q Did you ever pay Manoj Kumar a monthly check based  
3 on 7 percent of the gross income of your practice?

4 A I invoke my Fifth Amendment rights.

5 (Plaintiffs' Exhibit 1 was marked for  
6 identification.)

7 MR. GAERTE: Seth, can we go off record real  
8 quick?

9 MR. JOHNSON: Sure.

10 THE VIDEOGRAPHER: Okay. Just a moment. It's  
11 10:15. Off the record.

12 (A discussion was held off the record.)

13 THE VIDEOGRAPHER: It's 10:16. We're back on  
14 the record.

15 Q Dr. Masimore, do you see --

16 THE VIDEOGRAPHER: Microphone.

17 MR. JOHNSON: Oh, sorry.

18 Q Dr. Masimore, do you see Exhibit 1 in front of you?

19 A Yes, I do.

20 Q Exhibit 1 is a series of checks. The first one on  
21 page 1 is made -- is from you, Gregory S. Masimore.  
22 Do you see that?

23 A Yes.

24 Q Is this a check from your bank account?

25 A Yes.

1 Q And is that your signature on the check?

2 A Yes.

3 Q And is the check made out to Manoj Kumar?

4 A Yes.

5 Q And it's for \$90?

6 A Yes.

7 Q And it's dated 7/13/2010?

8 A It's hard to see, but it looks like that.

9 Q Fair enough.

10 A Yes.

11 Q If you turn to page 2 of this exhibit, is this a

12 copy of a check from Gregory S. Masimore and Pain

13 Management Solutions, LLC?

14 A Yes, it is.

15 Q At Fifth Third Bank?

16 A That's correct.

17 Q Was Fifth Third Bank the bank you -- or Pain

18 Management Solutions had an account at?

19 A That's correct.

20 Q Is that your signature on the check?

21 A Yes, it is.

22 Q Okay. And is this an accurate copy of a check from

23 Pain Management Solutions and yourself?

24 A It is.

25 Q And it's made out to Manoj Kumar?

1 A Correct.

2 Q For \$3,500?

3 A Correct.

4 Q And it's dated 10/28/2010?

5 A That is correct.

6 Q If you would, turn to page 8 in this exhibit. And

7 you should be looking at check number 0554.

8 MR. GAERTE: I think that's it.

9 THE WITNESS: 554 he said.

10 MR. GAERTE: 554?

11 MR. JOHNSON: 554.

12 Q Are you there with me?

13 A Yes, I am.

14 Q Okay. And is this also an accurate copy of a check

15 from Pain Management Solutions?

16 A It is my check.

17 Q Okay. And it's made out to MK Land Holdings?

18 A That is correct.

19 Q For the amount of \$427.14?

20 A Yes.

21 Q And is that your signature on the check?

22 A Yes, it is.

23 Q Do you know who MK Land Holdings is?

24 A It's a company of Manoj Kumar.

25 Q So you would agree with me based on the checks in



1 Exhibit 1 that Pain Management Solutions has paid  
2 money to Manoj Kumar?

3 MR. GAERTE: Object and instruct the witness  
4 to rely upon his Fifth Amendment privilege.

5 Q Are you relying on the advice of counsel in  
6 declining to answer this question?

7 A I am invoking my Fifth Amendment rights.

8 Q When Pain Management Solutions employed Manoj  
9 Kumar, what services did he perform for the  
10 practice?

11 MR. GAERTE: Object and instruct the witness  
12 not to answer.

13 A I invoke my Fifth Amendment rights.

14 Q Does your practice currently send urine drug  
15 samples to a confirmation lab for testing?

16 MR. GAERTE: Same objection.

17 A I -- I invoke my Fifth Amendment rights.

18 MR. JOHNSON: For him currently sending urine  
19 drug samples?

20 MR. GAERTE: That's correct.

21 Q Has your practice ever sent urine drug samples to  
22 Physicians Choice Laboratory Services for urine  
23 drug testing?

24 MR. GAERTE: Same objection.

25 A I invoke my Fifth Amendment rights.

1 Q Did Manoj Kumar ever tell you to send urine drug  
2 samples to Physicians Choice Laboratory Service for  
3 confirmation testing?

4 MR. GAERTE: Same objection.

5 A I invoke -- I invoke my Fifth Amendment rights.

6 Q Did you refer urine drug samples to PCLS in  
7 exchange for PCLS not billing cash customers?

8 MR. GAERTE: Same objection.

9 MR. CAUDILL: I object to the form of that  
10 question.

11 A I invoke my Fifth Amendment rights.

12 Q When did you first hear of PCLS?

13 MR. GAERTE: Same objection.

14 A I invoke my Fifth Amendment rights.

15 Q Did anyone other than Manoj Kumar ever recommend  
16 that you use PCLS for urine drug samples?

17 MR. GAERTE: Same objection.

18 A I invoke my Fifth Amendment rights.

19 Q Have you ever seen any marketing materials from  
20 PCLS?

21 MR. GAERTE: Same objection.

22 A I invoke my Fifth Amendment rights.

23 Q Did anyone from PCLS ever come to your office to  
24 explain their services?

25 MR. GAERTE: Same objection.

1 A I invoke my Fifth Amendment rights.

2 Q Did you review any documents of any kind related to  
3 PCLS's services?

4 MR. GAERTE: Same objection.

5 A I invoke my Fifth Amendment rights.

6 Q Did PCLS ever provide software for your practice?

7 MR. GAERTE: Same objection.

8 A I invoke my Fifth Amendment rights.

9 Q Did you ever pay PCLS for software provided to your  
10 practice?

11 MR. GAERTE: Same objection.

12 A I invoke my Fifth Amendment rights.

13 (Plaintiffs' Exhibit 2 was marked for  
14 identification.)

15 Q Do you see Exhibit 2 in front of you?

16 A I do.

17 Q Okay. Is this a document entitled, Provider  
18 Acknowledgment Form?

19 A Yes, it is.

20 Q There's a signature on the bottom right corner of  
21 this document. Is that your signature?

22 MR. GAERTE: Object and instruct not to  
23 answer.

24 A I invoke my Fifth Amendment rights.

25 Q There's also other handwriting on this document.

1 Is that your handwriting?

2 MR. GAERTE: Object and instruct not to  
3 answer.

4 A I invoke my Fifth Amendment rights.

5 Q Do you know whether Manoj Kumar was employed by  
6 PCLS while he was working as your business manager?

7 MR. GAERTE: Same objection.

8 A I invoke my Fifth Amendment rights.

9 Q Did Manoj Kumar ever assist with your practice  
10 getting a desktop analyzer?

11 MR. GAERTE: Same objection.

12 A I invoke my Fifth Amendment rights.

13 Q When did Manoj Kumar stop serving as your business  
14 manager?

15 MR. GAERTE: Same objection.

16 A I invoke my Fifth Amendment rights.

17 Q Do you know how much you paid to Manoj Kumar during  
18 the course of his employment at Pain Management  
19 Solutions?

20 MR. GAERTE: Same objection.

21 A I invoke my Fifth Amendment rights.

22 Q Why did you refer urine drug samples to PCLS?

23 MR. GAERTE: Same objection.

24 A I invoke my Fifth Amendment rights.

25 Q Has PCLS ever provided you anything for free?

1 STATE OF INDIANA

2 COUNTY OF HAMILTON

3  
4 I, Julie A. Nicholson, RPR, CRR, a Notary  
5 Public in and for said county and state, do hereby  
6 certify that the deponent herein was by me first duly  
7 sworn to tell the truth, the whole truth, and nothing  
8 but the truth in the aforementioned matter;

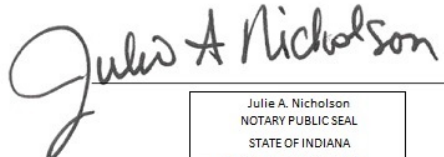
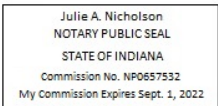
9 That the foregoing videotaped deposition was  
10 taken on behalf of the Plaintiffs; that said  
11 videotaped deposition was taken at the time and place  
12 heretofore mentioned between 10:04 a.m. and  
13 10:36 a.m.;

14 That said videotaped deposition was taken down  
15 in stenograph notes and afterwards reduced to  
16 typewriting under my direction; and that the  
17 typewritten transcript is a true record of the  
18 testimony given by said deponent;

19 And thereafter presented to said witness for  
20 signature; that this certificate does not purport to  
21 acknowledge or verify the signature hereto of the  
22 deponent.

23 I do further certify that I am a disinterested  
24 person in this cause of action; that I am not a  
25 relative of the attorneys for any of the parties.

1           IN WITNESS WHEREOF, I have hereunto set my  
2 hand and affixed my notarial seal this 9th day of  
3 October, 2020.

4  
5  
6  
7             
8             
9

10  
11  
12 My Commission Expires:  
13 September 1, 2022

14 Job No. 156336  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL FILE NO. 3:17-CV-37  
(CONSOLIDATED WITH CIVIL FILE NO. 3:17-CV-46)

UNITED STATES OF AMERICA ex rel.	)	
TARYN HARTNETT, and DANA SHOCHED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEPOSITION OF PHILIP MCHUGH
	)	
PHYSICIANS CHOICE LABORATORY	)	
SERVICES, DOUGLAS SMITH, PHILIP	)	
MCHUGH AND MANOJ KUMAR,	)	
	)	
Defendants.	)	

On Thursday, November 19, 2020, commencing at 9:33 a.m., the deposition of Philip McHugh was taken on behalf of the Plaintiff at the United States Attorney's Office, 227 West Trade Street, Suite 1650, Charlotte, North Carolina, and was attended by Counsel as follows:

APPEARANCES:

SETH JOHNSON, ESQ.  
KATHERINE ARMSTRONG, ESQ.  
BILL STETZER, ESQ.  
Assistant United States Attorney  
US Attorney's Office  
227 West Trade Street, Suite 1650  
Charlotte, North Carolina 28202  
on behalf of the Plaintiff

BO CAUDILL, ESQ.  
MATTHEW M. VILLMER, ESQ.  
Weaver, Bennett & Bland, PA  
196 North Trade Street  
Matthews, North Carolina 28105  
on behalf of the Defendant Philip McHugh

ATTENDING: Cathleen Hollowell

REPORTED BY: Barbie M. Lane, CVR-M, CCR  
ASHEVILLE REPORTING SERVICE

1 education sense?

2 A Yes.

3 Q Classes, courses, things like that?

4 A Yes.

5 Q Good. Talk to me about those. What kind of

6 continuing education courses and classes have

7 you done?

8 A Leadership courses.

9 Q How many of those have you done?

10 A Four or five.

11 Q Were they all with one company or separate

12 companies?

13 A Might be separate. They are separate.

14 Q Just can you give me a general overview of

15 what these leadership courses would be? How

16 many days it lasted, who presented, that kind

17 of thing?

18 A Sure. I'm sorry, say -- say your order of the

19 question again?

20 Q Sorry. I'm just looking at kind of generally

21 -- you sign up for one of these leadership

22 courses presumably; right?

23 A Yes, sir.

24 Q And then you go and attend it; right?

25 A Yes, sir.

1 can answer.

2 BY THE DEPONENT:

3 I don't remember.

4 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

5 Q Do you remember how often you've done this?

6 A A few times.

7 Q Was this in your individual capacity or was

8 this something that was done through PCLS?

9 A Both.

10 Q If PCLS was bringing in an individual teacher

11 would that be just for you or would that be

12 for presenting to the -- more members of the

13 company?

14 A Both.

15 Q Anything else in terms of your educational

16 background that we haven't talked about?

17 BY MR. VILLMER:

18 Objection to the form of the question. You

19 can answer.

20 BY THE DEPONENT:

21 I don't believe so.

22 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

23 Q Let's talk about your work history. Where are

24 you currently employed?

25 A Through Silent Storm Holdings.

1 Q And just generally what happens there? How

2 long do they last, what gets taught, that kind

3 of thing?

4 BY MR. VILLMER:

5 Objection to the form of the question. You

6 can answer.

7 BY THE DEPONENT:

8 They lasted several days, multiple presenters.

9 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

10 Q Was this something that you did in your own

11 individual capacity or was it something that

12 PCLS would pay for?

13 A Both.

14 Q Other than these leadership courses any other

15 education you received?

16 A Yes.

17 Q Could you tell me about that?

18 A Sure. Individual teachers, presenters coming

19 in and educating on certain subjects.

20 Q You mentioned coming in. Coming in to where?

21 A Coming to me or me going to them.

22 Q What subjects would you seek out these

23 individual teachers on?

24 BY MR. VILLMER:

25 Objection to the form of the question. You

1 Q Do you own Silent Storm Holdings?

2 A A portion of it.

3 Q Who else has an ownership interest in Silent

4 Storm Holdings?

5 A Various trusts.

6 Q Who controls those trusts?

7 BY MR. VILLMER:

8 Objection to the extent his response calls for

9 a legal conclusion. You can answer.

10 BY THE DEPONENT:

11 I'm not sure.

12 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

13 Q How many trusts have an ownership interest in

14 Silent Storm Holdings?

15 A One, perhaps two.

16 Q What are the names of those trusts?

17 A I can't recall.

18 Q Do you know who the trustee of those trusts

19 are?

20 A Yes.

21 Q Who is that?

22 A Jason McHugh.

23 Q Is Jason McHugh related to you?

24 A He is.

25 Q What's your relation to Jason McHugh?



1 A Brother.  
 2 Q Do you know who the beneficiary of these  
 3 trusts is?  
 4 BY MR. VILLMER:  
 5 Objection to the form of the question but you  
 6 can answer.  
 7 BY THE DEPONENT:  
 8 Yes.  
 9 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 10 Q Who?  
 11 A People.  
 12 Q Who are those people?  
 13 A My children.  
 14 Q So as far as the current ownership of Silent  
 15 Storm Holdings goes I've got yourself, and  
 16 then one to two trusts where Jason McHugh is  
 17 the trustee, and those trusts are in the  
 18 benefit of your children; is that accurate?  
 19 A I believe so.  
 20 Q Anyone else have an ownership in Silent Storm  
 21 Holdings currently?  
 22 A I don't know.  
 23 Q You don't know?  
 24 A I don't.  
 25 Q What is your ownership percentage in Silent

1 Storm Holdings currently?  
 2 A I don't know.  
 3 Q Who would you say has control of Silent Storm  
 4 Holdings?  
 5 BY MR. VILLMER:  
 6 Objection to the form of the question. You  
 7 can answer.  
 8 BY THE DEPONENT:  
 9 From a legal perspective I'm not exactly sure.  
 10 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 11 Q Who makes the decisions about what the company  
 12 does?  
 13 A Myself, I believe.  
 14 Q Anyone else?  
 15 A I would have to reference my attorney.  
 16 Q Has anyone other than yourself made any  
 17 decision about what the company Silent Storm  
 18 Holdings does?  
 19 A I'm not sure.  
 20 Q None come to mind?  
 21 BY MR. VILLMER:  
 22 Objection, asked and answered, but you can  
 23 answer.  
 24 BY THE DEPONENT:  
 25 I'd have to reference my attorney.

1 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 2 Q Do you have a title with Silent Storm  
 3 Holdings?  
 4 A Manager.  
 5 Q What type of company is Silent Storm Holdings?  
 6 A I'm not sure.  
 7 Q You don't know if it's like an LLC,  
 8 partnership, corporation?  
 9 A I'm not sure.  
 10 Q Has the ownership structure of Silent Storm  
 11 Holdings always been split between yourself  
 12 and one of the two trusts?  
 13 A I'm not sure.  
 14 Q You're not sure if there was ever at one point  
 15 where you were the sole owner of Silent Storm  
 16 Holdings?  
 17 BY MR. VILLMER:  
 18 Objection, asked and answered, but you can  
 19 answer.  
 20 BY THE DEPONENT:  
 21 Correct.  
 22 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 23 Q By current you mean you're not sure?  
 24 A Correct.  
 25 Q What does Silent Storm Holdings do?

1 A Can you define your question?  
 2 Q Sure. It's a company; correct?  
 3 A Correct.  
 4 Q So what's it's purpose? What does it do? How  
 5 does it make money?  
 6 A It's a holding company.  
 7 Q It's a holding company for other company's;  
 8 right?  
 9 A I believe so.  
 10 Q What other companies does Silent Storm  
 11 Holdings hold?  
 12 A I'm not sure, sir.  
 13 Q How does Silent Storm Holdings make money?  
 14 A I'm not sure it does.  
 15 Q Do you derive any income from Silent Storm  
 16 Holdings?  
 17 A I don't believe so.  
 18 Q Do you receive any distributions from Silent  
 19 Storm Holdings?  
 20 A No.  
 21 Q I earlier asked you if you were currently  
 22 employed and you said you're sole employment  
 23 was for Silent Storm Holdings; correct?  
 24 A Correct.  
 25 Q But you're not making any money from Silent

1 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 2 Q Can you correct me on my timeline?  
 3 A Yeah. It closed when Government orders for  
 4 businesses to be closed down approximately in  
 5 February. We reopened approximately 30 days  
 6 ago, and decided on closing our doors  
 7 permanently October 31st.  
 8 Q You closed the doors on October 31st. When  
 9 were the assets liquidated?  
 10 A They're currently being liquidated.  
 11 Q So they have not yet been liquidated?  
 12 A Not all of them.  
 13 Q Some of them have?  
 14 A Yes.  
 15 Q Other than Silent Storm Holdings and PIM do  
 16 you currently have an ownership interest in  
 17 any other companies?  
 18 A Ownership interest? Yes.  
 19 Q What companies are those?  
 20 A MP Associates.  
 21 Q What does MP Associates do?  
 22 A A holding company.  
 23 Q What's it a holding company for?  
 24 A For stock.  
 25 Q Does anyone else have an ownership interest in

1 MP Associates?  
 2 A They do.  
 3 Q Who's that?  
 4 A Manoj Kumar.  
 5 Q What's the split between your ownership  
 6 interest and his ownership interest in MP  
 7 Associates?  
 8 A It's approximately 50/50.  
 9 Q Any other companies that you currently own?  
 10 A Yes.  
 11 Q What are those?  
 12 A M Holdings.  
 13 Q And what's M Holdings?  
 14 A Just a holding company.  
 15 Q And what is it a holding company for?  
 16 A Other assets.  
 17 Q What assets are those?  
 18 A I'm not sure.  
 19 Q Does anyone else have an ownership interest in  
 20 M Holdings?  
 21 A I'm not sure.  
 22 Q Any other companies?  
 23 A I don't believe so.  
 24 Q Let's go back to -- we've kind of talk about  
 25 your current interest. I want to kind of go

1 back to the beginning. When you first entered  
 2 the workforce what were you doing?  
 3 A Sales.  
 4 Q Sales for who?  
 5 A Rubico.  
 6 Q And what type of company was that?  
 7 A Datacard company, franchise.  
 8 Q Do you remember roughly when you were at  
 9 Rubico?  
 10 A '98.  
 11 Q Until?  
 12 A 2000 approximately.  
 13 Q After Rubico what did you do?  
 14 A Opened up a business.  
 15 Q What business was that?  
 16 A Joe Picasso's.  
 17 Q Say that again?  
 18 A Joe Picasso's.  
 19 Q What was Joe Picasso's?  
 20 A A retail store.  
 21 Q What type of goods did it sell?  
 22 A I'm sorry?  
 23 Q What type of goods did it sell?  
 24 A Pottery, café items.  
 25 Q How long did you work at Joe Picasso's?

1 A Approximately two and a half years.  
 2 Q How did the Joe Picasso's business end?  
 3 A Selling my shares to my partner.  
 4 Q After you sold your shares in Joe Picasso's to  
 5 your partner what did you do?  
 6 A I purchased a home.  
 7 Q In terms of your employment and work what did  
 8 you do?  
 9 A Purchased a home to fix up and sell it.  
 10 Q So you flipped a house; right?  
 11 A Correct.  
 12 Q After you flipped that house what did you do?  
 13 A I flipped more homes.  
 14 Q How long were you flipping homes for?  
 15 A I'm not sure.  
 16 Q Can you give me just a ballpark; two, three,  
 17 five years?  
 18 BY MR. VILLMER:  
 19 Objection to the form of the question. You  
 20 can answer.  
 21 BY THE DEPONENT:  
 22 I'm not sure, sir.  
 23 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 24 Q Fair enough. After you were flipping homes  
 25 did you do anything else work-wise?

1 system that PCS ultimately used; right?

2 A Yes.

3 Q What was your contribution to PCS?

4 A Organizing.

5 Q How long was PCS in business for?

6 A About one year.

7 Q What did you do after that?

8 A Started PCLS.

9 Q And that was also with Smith and Sowinski;

10 correct?

11 A Correct.

12 Q Can you tell me a little bit about how PCLS

13 came to be?

14 BY MR. VILLMER:

15 Objection to the form of the question. You

16 can answer.

17 BY THE DEPONENT:

18 Because the referrals to outside laboratories

19 was not a good relationship.

20 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

21 Q What do you mean by not a good relationship?

22 A They were not listening to doctors. They were

23 not processing the samples quickly,

24 efficiently. They were not focused on the

25 doctors.

1 Q Did it test any other types of samples?

2 A Not that I remember.

3 Q What about oral samples?

4 A Not that I remember.

5 Q When yourself, Smith and Sowinski started PCLS

6 what were the ownership shares in the company

7 between the three of you?

8 BY MR. VILLMER:

9 Objection to the form of the question, but you

10 can answer.

11 BY THE DEPONENT:

12 Doug Smith had the majority of shares. I came

13 next, and then Marcus Sowinski underneath us.

14 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

15 Q Do you remember what your percentage was?

16 A Approximately 25 percent.

17 Q Do you remember what Smith's was?

18 A Approximately 50 percent.

19 Q What about Sowinski?

20 A Somewhere around 20 percent.

21 Q At PCLS's founding what was your title?

22 A CEO.

23 Q How long were you the CEO of PCLS?

24 A Approximately two years or less.

25 Q Who became the CEO after you?

1 Q By referrals, what type of referrals were you

2 referencing?

3 A Physicians.

4 Q Referrals for what?

5 A I'm sorry. Can you speak louder?

6 Q Sure. You mentioned that there was a need to

7 listen to doctors with respect to referrals to

8 labs; right?

9 A Uh-huh. (Affirmative)

10 Q What type of referrals were those to labs?

11 A Patient samples.

12 Q Urine drug samples?

13 A Yes.

14 Q Any other types of samples?

15 A Not at the time.

16 Q What about later?

17 A I don't believe so.

18 Q So PCLS was in the business of testing urine

19 drug samples; correct?

20 BY MR. VILLMER:

21 Objection to the form of the question. You

22 can answer.

23 BY THE DEPONENT:

24 Yes.

25 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

1 A Joe Wiegall.

2 Q Did he ultimately also acquire an ownership

3 interest in the company?

4 A He did.

5 Q And what was his ownership interest?

6 A Approximately 10 percent.

7 Q Did your ownership interest in the company

8 ever change with regard to its percentage?

9 A Yes.

10 Q What did it change to?

11 A I don't remember exactly.

12 Q Did it increase or decrease?

13 A Decrease.

14 Q Do you remember by how much?

15 A No, not exactly.

16 Q Do you remember when that was?

17 A Yes. In the very beginning.

18 Q When you say the very beginning is that -- are

19 you talking about 2009?

20 A Yes.

21 Q Was that prior to the roughly 50/25 split that

22 you were talking about?

23 A Uh-huh. (Affirmative)

24 Q So it changed into that 25 percent interest?

25 A Yes.

1 Q And then remained constant after that?

2 A Yes.

3 (GOVERNMENT'S EXHIBIT NO. 1 MARKED)

4 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

5 Q Mr. McHugh, I am showing you what has been

6 marked as Government's Exhibit 1. Do you

7 recognize this document?

8 A Not really.

9 Q I will -- if you'll turn to the second page of

10 the document.

11 A Oh, okay.

12 Q That might help you. I'll represent to you

13 this is the Articles of Organization for a

14 Florida Limited Liability Company, that

15 company being Physicians Choice Laboratory

16 Services. Do you see that?

17 A I do.

18 Q And these were filed January 7th, 2009? Do

19 you see the little file stamp?

20 A I do now.

21 Q If you will turn to the last page. It's got

22 Article 4, which is Management, and that says,

23 "The Limited Liability Company is to be

24 managed by one or more members and is,

25 therefore, a Member Managed Company." Did I

1 Q If you will turn to the last page you will see

2 signatures for yourself, Mr. Smith and Mr.

3 Sowinski; correct?

4 A Yes.

5 Q And is that your signature on this document?

6 A It appears to be.

7 Q And it's dated May 28th, 2019; correct?

8 A Correct.

9 Q When you were at PCLS, Mr. McHugh, how were

10 you paid?

11 BY MR. VILLMER:

12 Objection to the form of the question. You

13 can answer.

14 BY THE DEPONENT:

15 By salary.

16 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

17 Q You received a salary in your role as CEO?

18 A I did.

19 Q How much was that?

20 A It varied.

21 Q Can you give me a ballpark?

22 A Two thousand dollars.

23 Q Did it start at \$2,000?

24 A Yes.

25 Q And that was in 2009?

1 read that correctly?

2 A Yes.

3 Q And it lists two managing members; yourself

4 and Douglas Smith?

5 A Yes.

6 Q Is that your signature at the bottom?

7 A It is.

8 BY MR. CAUDILL:

9 Seth, I'm sorry to interrupt. Phil, please

10 make sure not to mark -- put any markings on

11 that exhibit with that pen.

12 BY THE DEPONENT:

13 Okay.

14 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

15 Q Mr. McHugh, I'm going to show you what's being

16 marked as Government's Exhibit 2.

17 (GOVERNMENT'S EXHIBIT NO. 2 MARKED)

18 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

19 Q Do you recognize this document?

20 A Yes.

21 Q What is it?

22 A Operating Agreement for Physicians Choice

23 Laboratory Services.

24 Q And was this the operating agreement for PCLS?

25 A It appears to be.

1 A Yes.

2 Q And then what did it vary to?

3 A I'm not sure.

4 Q Did it increase?

5 A It did.

6 Q Do you know by how much it increased?

7 A It might have been 100,000.

8 Q Do you know when that would have been?

9 A Maybe in 2010.

10 Q Did it remain relatively constant after that

11 increase to 100,000?

12 A Yes.

13 Q What about -- you said you were CEO until Joe

14 Wiegall became CEO. After Joe Wiegall became

15 CEO what was your role at the company?

16 A President.

17 Q And did you serve in that role for the

18 remainder of PCLS's existence?

19 A No.

20 Q How long were you president?

21 A Several years.

22 Q Do you have an estimate of the timeframe for

23 those several years?

24 A Yes.

25 Q What was that?

1 A 2010 to 2013.  
 2 Q After your role as president what was your  
 3 role at PCLS?  
 4 A I did not have a role.  
 5 Q You were an owner of PCLS the entire time the  
 6 company was in existence; correct?  
 7 A Yes.  
 8 Q And as an owner you received distributions;  
 9 right?  
 10 A Yes.  
 11 Q Do you know roughly how much you received in  
 12 distributions from PCLS?  
 13 A I do not.  
 14 Q Let's turn your attention to what's being  
 15 marked as Government's Exhibit 3.  
 16 (GOVERNMENT'S EXHIBIT NO. 3 MARKED)  
 17 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 18 Q Do you recognize the documents in Government's  
 19 Exhibit 3?  
 20 A Yes.  
 21 Q What are they?  
 22 A Owner's/Shareholder's Share of Income,  
 23 Deductions, Credits, et cetera, for 2011.  
 24 Q Through 2014; correct? If you'll flip,  
 25 there's multiple pages.

1 Q And you see where it lists Physicians Choice  
 2 Laboratory Services in box B?  
 3 A Yes.  
 4 Q And you see where it lists owner or  
 5 shareholder's name as Silent Storm Holdings,  
 6 LLC, Attention Phil McHugh in box D?  
 7 A I do.  
 8 Q And if you'll go down you'll see where it says  
 9 "Owner's/Shareholder's percentage of profit  
 10 and loss sharing," and it has 26.75 percent  
 11 in ---  
 12 A Yes.  
 13 Q --- in box I?  
 14 A Yes.  
 15 Q Was that your specific ownership share in  
 16 PCLS?  
 17 A I believe so.  
 18 Q And then if you will go to the other column,  
 19 which is at the top, entitled  
 20 Owner's/Shareholder's Share of Current Year  
 21 Alabama Income, Deductions, Credit, and Other  
 22 Items. Do you see that?  
 23 A Uh-huh. (Affirmative)  
 24 Q Do you see box X where it says withdrawals and  
 25 distributions?

1 A Thank you. Yes.  
 2 Q This is a Schedule K-1 which is a tax form  
 3 that you filed; right?  
 4 A I believe so.  
 5 Q And if you'll look at box B.  
 6 A Which page?  
 7 BY MR. VILLMER:  
 8 Which page are you talking about, Seth?  
 9 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 10 Q Sorry. Good question. Just go to the first  
 11 page for the 2011 K-1.  
 12 A Okay.  
 13 Q It's the same form throughout, but we'll start  
 14 at 2011 and continue on. You'll see Part 1  
 15 which has information about the past through  
 16 entity; right? The left-hand column.  
 17 BY MR. VILLMER:  
 18 Objection to the form, but you can answer.  
 19 BY THE DEPONENT:  
 20 Say your question again, sir.  
 21 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 22 Q Sure. Do you see on the left-hand column  
 23 where it says, "Part 1, Information About the  
 24 Pass Through Entity"?  
 25 A Yes.

1 A No.  
 2 Q It is five up from the bottom.  
 3 A Yes, now. Thank you.  
 4 Q And the withdrawals and distributions listed  
 5 for 2011 are \$1,890,000.68 -- sorry, let me  
 6 say that again. The withdrawals and  
 7 distributions for 2011 are \$1,890,068;  
 8 correct?  
 9 A Correct.  
 10 Q So you received \$1,890,068 in distributions  
 11 from PCLS in 2011; correct?  
 12 A It appears to be.  
 13 Q You have no reason to dispute the tax forms  
 14 that you filed; right?  
 15 A I don't believe so.  
 16 Q Let's go to the 2012 K-1.  
 17 A Uh-huh. (Affirmative)  
 18 Q Similar form. This one's with the IRS? Do  
 19 you see that?  
 20 A Yes.  
 21 Q Box B lists Physicians Choice?  
 22 A Yes.  
 23 Q Box F lists Silent Storm, Attention Phil  
 24 McHugh?  
 25 A Yes.

1 Q Same ownership percentage in box J?  
 2 A Yes.  
 3 Q And for distributions in this year it has  
 4 \$9,350,794?  
 5 A Yes.  
 6 Q So in 2012 you received \$9,350,794 from PCLS;  
 7 correct?  
 8 A It appears to be.  
 9 Q 2013, same form. Lists distributions as  
 10 \$8,594,785? Is that -- did I read that right?  
 11 A Yes.  
 12 Q So in 2013 you received \$8,594,785 from PCLS;  
 13 correct?  
 14 A It appears to be.  
 15 Q If you'd turn to the 2014 one. Same form.  
 16 Lists distributions as \$7,604,390 from PCLS;  
 17 correct?  
 18 A Yes.  
 19 Q So in 2014 you received \$7,604,390 from PCLS  
 20 in distributions; right?  
 21 A It appears to be.  
 22 Q Do those numbers comport with your  
 23 recollection of the distributions you have  
 24 received from PCLS?  
 25 BY MR. VILLMER:

1 Q You're not sure?  
 2 BY MR. VILLMER:  
 3 Objection, asked and answered. You can  
 4 answer.  
 5 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 6 Q As you sit here today do you know how much  
 7 money you received in distributions from PCLS?  
 8 A No.  
 9 Q Do you have any reason to dispute the numbers  
 10 in any of the tax filings we looked at?  
 11 A I'm unsure.  
 12 Q Going back to PCLS's inception, what did Smith  
 13 contribute to PCLS?  
 14 A Money.  
 15 Q Anything else?  
 16 A Time.  
 17 Q What did he do?  
 18 A I'm not sure how to answer that.  
 19 Q What was his role, what did he contribute,  
 20 what projects did he work on? Just generally  
 21 what was he doing at the company in the  
 22 beginning?  
 23 BY MR. VILLMER:  
 24 Objection to the form of the question. You  
 25 can answer.

1 Objection, asked and answered, but you can  
 2 answer.  
 3 BY THE DEPONENT:  
 4 Can you clarify your question?  
 5 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 6 Q We went through your tax filings with regard  
 7 to the distributions you received from PCLS;  
 8 right?  
 9 BY MR. VILLMER:  
 10 Objection to the form of the question, but you  
 11 can answer.  
 12 BY THE DEPONENT:  
 13 Yes.  
 14 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 15 Q And do the numbers you've listed on your tax  
 16 filings with regard to the distributions you  
 17 received from PCLS generally comport with your  
 18 recollection of the amounts of distributions  
 19 you received from PCLS?  
 20 BY MR. VILLMER:  
 21 Objection to the form of the question. You  
 22 can answer.  
 23 BY THE DEPONENT:  
 24 I'm not sure.  
 25 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

1 BY THE DEPONENT:  
 2 He was an investor and he contributed into  
 3 everything.  
 4 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 5 Q Do you know how much money he invested into  
 6 PCLS?  
 7 A I'm unsure.  
 8 Q Do you have a ballpark?  
 9 A Less than a half a million.  
 10 Q Does about 400,000 sound right?  
 11 BY MR. VILLMER:  
 12 Objection, asked and answered. You can  
 13 answer.  
 14 BY THE DEPONENT:  
 15 I'm unsure.  
 16 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 17 Q Did anyone else contribute money to PCLS back  
 18 in the beginning in 2009?  
 19 A Yes.  
 20 Q Who?  
 21 A Joe Wiegall.  
 22 Q How much did Joe contribute?  
 23 A Approximately 30,000.  
 24 Q Did Mr. Sowinski contribute anything?  
 25 A No.

1 Q Did you yourself contribute any money in 2009?

2 A Yes, but I'm unsure how much.

3 Q Do you have a ballpark?

4 A I would just be guessing and I don't want to

5 do that.

6 Q Less than Smith?

7 A Yes.

8 Q Less than Wiegall?

9 BY MR. VILLMER:

10 Objection, asked and answered, but you can

11 answer.

12 BY MR. JOHNSON:

13 When did I ask him if the money was less than

14 Joe Wiegall?

15 BY MR. VILLMER:

16 If you want to get into it, you've asked him

17 several times how much it was. He said he

18 doesn't know. He doesn't want to guess. And

19 now you're giving him specific amounts of

20 money and asking if it was more or less. He

21 said he doesn't know and he doesn't want to

22 guess, but you can answer again.

23 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

24 Q Do you remember if the money you contributed

25 was more or less than the money that Joe

1 at PCLS?

2 A Yes.

3 Q Who were those employees?

4 A Katie Small, Mark Roth, Shirley Liu, Joe

5 Wiegall, Sandy Weaver.

6 Q What about Dinah Myers?

7 A Dinah Myers, yes.

8 Q Anyone else?

9 A Ralph Smith.

10 Q When did PCLS's lab get up and running?

11 A 2009.

12 Q Can you be more specific when in 2009?

13 A Can you define your question more?

14 Q Sure. I assume that when you set out to start

15 a lab it didn't just open up on day one;

16 correct?

17 A That's correct.

18 Q But at some point it would have had the

19 capacity to, you know, accept a sample for

20 testing and test that sample; right?

21 A Correct.

22 Q At what point was that?

23 A Approximately August.

24 Q Prior to starting PCLS did you have any

25 experience operating or running a lab?

1 Wiegall contributed in 2009?

2 A I'd rather not speculate, sir.

3 Q Have you contributed money to PCLS at any

4 other point?

5 A Yes.

6 Q How much?

7 A More than a million, less than three.

8 Q Why were you contributing to PCLS?

9 A Because when the Government inquiry

10 investigation started we were not able to

11 receive any outside funding from banks.

12 Q Did you contribute the one to three million

13 all at once?

14 A No.

15 Q Do you recall like how many specific

16 contributions that was?

17 A I don't.

18 Q But it was after the Government's

19 investigation started?

20 A Correct.

21 Q Contribute anything other than the 2009

22 contributions you mentioned prior to that?

23 A No.

24 Q At the beginning, other than yourself, Smith

25 and Sowinski, were there any employees there

1 A I did not.

2 Q Did Mr. Sowinski?

3 A He did not.

4 Q What about Dr. Smith?

5 A Not that I'm aware of.

6 Q We've been going about an hour. Do you want

7 to take a five minute break?

8 A I'm okay.

9 BY MR. VILLMER:

10 Seth, I need to go to the restroom. So I'm

11 going to take you up on that, if that's all

12 right.

13 BY MR. JOHNSON:

14 Okay.

15 (OFF THE RECORD)

16 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

17 Q Do you know a Dr. Orlando Florete, Mr. McHugh?

18 A Yes.

19 Q How do you know Dr. Florete?

20 A He was a referral at the lab.

21 Q So Dr. Florete referred urine drug samples for

22 testing to PCLS; correct?

23 A Yes.

24 Q Do you know what time period Dr. Florete

25 referred urine drug samples to PCLS?

1 A I do not.  
2 Q And his practice was the Institute of Pain  
3 Management in Jacksonville, Florida; correct?  
4 A I believe so.  
5 Q Do you know if other doctors at his practice  
6 also referred samples to PCLS?  
7 A I believe so.  
8 Q Do you know generally when they referred  
9 samples?  
10 A I do not.  
11 Q Do you know who those doctors were?  
12 A I do not.  
13 Q How did you come to meet Dr. Florete?  
14 A He was visiting the lab.  
15 Q Can you talk a little bit more about that? I  
16 mean, did he just show up at the lab one day?  
17 BY MR. VILLMER:  
18 Objection to the form of the question. You  
19 can answer.  
20 BY THE DEPONENT:  
21 Yes.  
22 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
23 Q And that's how you met him?  
24 A Yes.  
25 Q Do you remember when that was?

1 'Make' promises to pay to the order of Silent  
2 Storm Holdings, LLC" -- do you see that?  
3 A I do.  
4 Q "The principal sum of \$1,700,000?  
5 A I do.  
6 Q Does this help refresh your recollection as to  
7 when you made the original loan to Dr. Florete  
8 and his practice?  
9 A Yes.  
10 Q And that was October 18, 2013?  
11 A I believe so.  
12 Q And the original amount that you loaned Dr.  
13 Florete was for 1.7 million dollars; correct?  
14 A I believe so.  
15 Q You don't remember specifically how much you  
16 loaned him?  
17 BY MR. VILLMER:  
18 Objection to the form of the question, but you  
19 can answer.  
20 BY THE DEPONENT:  
21 It was a long time ago.  
22 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
23 Q You don't have any reason to dispute the 1.7  
24 million dollar amount in this promissory note,  
25 do you?

1 A No.  
2 Q Who introduced you to Dr. Florete?  
3 A I'm not sure.  
4 Q Did you make a loan to Dr. Florete?  
5 A I did.  
6 Q When was that?  
7 A I'm unsure of the date.  
8 Q I have some documents for you.  
9 (GOVERNMENT'S EXHIBIT NOS. 4, 5, 6, 7 MARKED)  
10 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
11 Q Mr. McHugh, I have handed you, for time saving  
12 purposes, a stack of exhibits labeled 4  
13 through 7. Do you see those?  
14 A Yes.  
15 Q Let's start with Exhibit 4. This is an  
16 October 18th, 2013 Promissory Note with the  
17 Institute of Pain Management, Aries Medical  
18 Corporation, and Silent Storm Holdings, LLC.  
19 Do you see that?  
20 A I see Promissory Note. I see October 18th,  
21 2013. And I see, Th undersigned Maker,  
22 Institute of Pain Management, P.A., a Florida  
23 Professional Association and Aries Medical  
24 Corporation."  
25 Q "Hereinafter collectively referred to as

1 A I don't believe so.  
2 Q When did you first discuss loaning Dr. Florete  
3 money with him?  
4 A When he came up to the laboratory.  
5 Q Did he ask you for a loan?  
6 A He did.  
7 Q Did he tell you why he wanted a loan?  
8 A He did.  
9 Q What did he say?  
10 A To pay the IRS, to consolidate debt, and to  
11 pay off an individual.  
12 Q Was that individual Bill Hughes?  
13 A It was.  
14 Q And who is Bill Hughes?  
15 A Bill Hughes is the owner of UOFL.  
16 Q What is -- what type of company is UOFL?  
17 A I don't know.  
18 Q What you don't know what type of company it  
19 is?  
20 A I don't.  
21 Q Do you know generally what they did business-  
22 wise?  
23 A I believe so.  
24 Q What is that?  
25 A They were a laboratory.



1 Q And that's actually what I was asking you with  
 2 regard to what type of company. So UOFL was a  
 3 laboratory; correct?  
 4 A Yes.  
 5 Q They also did testing?  
 6 A Yes.  
 7 Q On what type of samples did UOFL do testing?  
 8 A Oral.  
 9 Q Did PCLS ever do confirmation testing on  
 10 samples that were first tested by UOFL?  
 11 A Yes.  
 12 Q When did that start?  
 13 A I don't remember.  
 14 Q Do you remember when it ended?  
 15 A I do not.  
 16 Q We'll circle back to UOFL. So in terms of the  
 17 reasons Florete gave you as to why he wanted  
 18 the loan, I have pay off the IRS; is that  
 19 right?  
 20 A Correct.  
 21 Q Pay off Bill Hughes?  
 22 A That was the third one.  
 23 Q Right. That was one of the reasons; correct?  
 24 A That's correct.  
 25 Q Do you know how much he owed to Bill Hughes?

1 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 2 Q Did you suggest the 1.7 million dollar figure?  
 3 A I don't believe so.  
 4 Q So you believe that came from Dr. Florete?  
 5 BY MR. VILLMER:  
 6 Objection, asked and answered, but you can  
 7 answer.  
 8 BY THE DEPONENT:  
 9 For his business partners, or business people.  
 10 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 11 Q And that would have been Travis Guthrie?  
 12 A Yes.  
 13 Q Anyone else?  
 14 A Robert Dobbs.  
 15 Q What's your understanding of Travis Guthrie's  
 16 role with Florete?  
 17 A Business manager.  
 18 Q What's your understanding of Robert Dobbs'  
 19 role?  
 20 A He was brought on board to straighten out the  
 21 financial situation going on with Orlando and  
 22 his practice.  
 23 Q Was he brought on back in October -- or the  
 24 time period around October, 2013?  
 25 A I believe so.

1 A No.  
 2 Q And then the second reason you mentioned was  
 3 consolidate debts?  
 4 A Correct.  
 5 Q Is that another term for pay off debts?  
 6 A Perhaps.  
 7 Q By consolidating the debt you would use the  
 8 money received from a borrower to pay off  
 9 another borrower; right?  
 10 A Correct.  
 11 Q Other than -- so Florete tells you he needs a  
 12 loan. Did he tell you how much money he  
 13 needed?  
 14 A 1.7.  
 15 Q So that number came from Florete?  
 16 A I'm unsure.  
 17 Q I guess, did Florete ask for more than that  
 18 and you guys settled on 1.7? Did he just ask  
 19 for the 1.7? How did you arrive at the 1.7  
 20 million dollar figure?  
 21 BY MR. VILLMER:  
 22 Objection to the form of the question. You  
 23 can answer.  
 24 BY THE DEPONENT:  
 25 I'm not exactly sure, sir.

1 Q When Florete broached the subject of a 1.7  
 2 dollar -- 1.7 million dollar loan with you  
 3 while he was visiting PCLS, what else did you  
 4 discuss with him regarding the loan?  
 5 A Just that I was in the business of lending  
 6 institutions and individuals' monies that I  
 7 was already doing. Thus it broached the  
 8 subject of could I -- could I give a loan to  
 9 his company.  
 10 Q And that's IPM and Aries Medical; right?  
 11 A Correct.  
 12 Q Dr. Florete knew you were associated with  
 13 PCLS; right?  
 14 BY MR. VILLMER:  
 15 Objection. Calls for speculation, but you can  
 16 answer.  
 17 BY THE DEPONENT:  
 18 I believe so.  
 19 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 20 Q He was meeting with you at PCLS' facility;  
 21 right?  
 22 A I don't know how to answer your question, sir.  
 23 Can you -- can you rephrase that?  
 24 Q You said that you first discussed the loan  
 25 with PCLS when he came to PCLS; right?

1 A Correct.

2 BY MR. VILLMER:

3 Objection to the form of the question, but you

4 can answer.

5 BY THE DEPONENT:

6 Sorry. Correct.

7 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

8 Q But you would have been discussing the loan

9 with Dr. Florete while at PCLS?

10 A Yes.

11 Q Was that in your office?

12 A No.

13 Q Where was it at in PCLS?

14 A The cafeteria.

15 Q Did you ever tell Dr. Florete what your role

16 at PCLS was?

17 A I'm unsure.

18 Q Did anyone else tell him what your role was?

19 A I'm unsure.

20 Q Why did you loan Dr. Florete the 1.7 million?

21 A Because my attorney said it was okay for me to

22 do so.

23 Q And what attorney was that?

24 A Anna Winger.

25 Q Did you consult with any other attorneys back

1 practice.

2 Q So you knew the practice was in financial

3 trouble when you made the loan; correct?

4 A I don't know if that statement's true.

5 Q Well, you knew Florete had to pay off the IRS;

6 right?

7 A I was told that, yes.

8 Q And you were told that he had to consolidate

9 some debts; right?

10 A I was told that.

11 Q And you were told that he had to pay off Bill

12 Hughes; right?

13 A I was told that.

14 Q You mentioned that you were presented with a

15 turnaround plan?

16 A Yes.

17 Q Can you tell me about that? Was that a

18 document? Was that something they discussed

19 with you? What was the turnaround plan?

20 BY MR. VILLMER:

21 Objection to the form of the question, but you

22 can answer.

23 BY THE DEPONENT:

24 All the above.

25 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

1 in October, 2013 when you made the loan?

2 BY MR. VILLMER:

3 Objection to the form of the question, but you

4 can answer.

5 BY THE DEPONENT:

6 I don't recall if I spoke to them or Anna

7 Winger spoke to them of -- back in October,

8 2013, but I know other attorneys were

9 involved.

10 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

11 Q In the loan deal?

12 A Correct.

13 Q But any -- I guess any communication with

14 those other attorneys would have been through

15 Ms. Winger, if it wasn't through yourself;

16 right?

17 A Correct.

18 Q You mentioned that your attorney said it was

19 okay to do it. My specific question to you

20 thought is why did you do it?

21 A Because I believed in him and the team that

22 was with him. Robert Dobbs, a banking

23 executive, that had come onboard his team. I

24 believed in Travis Guthrie. And they were

25 showing me a solid turnaround plan for the

1 Q What documents did they show you?

2 A Balance sheets, proformas.

3 Q In terms of the due diligence that you did

4 prior to making the October, 2013 loan, what

5 documents did you review?

6 A Everything that I've already said; balance

7 sheets, proformas, current -- current volume

8 of a clinic patient, where they were AR.

9 People that they had replaced.

10 Q For what years did you review balance sheets

11 for?

12 A I believe the last two years.

13 Q So 2013 and 2012?

14 A I believe so.

15 Q Do you know if you've produced those balance

16 sheets to the Government?

17 A I'm not sure.

18 Q Did you provide the balance sheets that you

19 received to anyone else?

20 A I'm unsure.

21 Q Did you give them to your lawyer or

22 accountant?

23 BY MR. VILLMER:

24 Objection, asked and answered, but you can

25 answer.

1 BY THE DEPONENT:  
2 Same answer, sir. I'm unsure if I gave them  
3 to Anna Winger or not.  
4 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
5 Q Were the balance sheets for Aries or IPM?  
6 A I'm unsure, sir.  
7 Q Do you know if whatever company the balance  
8 sheets were for, do you know if that company  
9 was profitable?  
10 A Again, I don't recall.  
11 Q Who at PCLS knew that you were loaning Dr.  
12 Florete money in October of 2013?  
13 A I don't believe anyone.  
14 Q Did Manoj Kumar know?  
15 A I don't believe so.  
16 Q Did you talk to anyone in PCLS's compliance  
17 department regarding the October, 2013 loan to  
18 Dr. Florete?  
19 A I don't ---  
20 BY MR. VILLMER:  
21 Objection to the form of the question, but you  
22 can answer.  
23 BY THE DEPONENT:  
24 I don't believe so.  
25 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

1 A It appears to be that way, yes.  
2 Q And you had access to Silent Storm Holding's  
3 bank accounts; right?  
4 A I did.  
5 Q You had signature authority on the account?  
6 A Yes, I did.  
7 Q Did anyone else?  
8 A I don't believe so.  
9 Q And this is an account statement for October,  
10 2013; right?  
11 A Yes.  
12 Q If you would, turn to the second to the last  
13 page. Do you see the third entry from the top  
14 dated 10/18 for 1.7 million dollars?  
15 A I do.  
16 Q And that's a wire transfer to Aires Medical  
17 Corporation?  
18 A Yes.  
19 Q So you, in fact, wired the 1.7 million dollars  
20 for the loan to Aries Medical Corporation;  
21 right?  
22 A Yes.  
23 Q If you could turn to Exhibit 7. This is a  
24 also a bank account statement from Wells  
25 Fargo. And do you see where it says Phillip

1 Q If you will look at Exhibit 5. This is a  
2 March 24th, 2014 Promissory Note Modification  
3 Agreement. Do you see that?  
4 A I do.  
5 Q Did you in March, 2014 loan Dr. Florete an  
6 additional \$300,000?  
7 A I believe so.  
8 Q If you could turn -- why did you loan Dr.  
9 Florete an additional \$300,000 in March of  
10 2014?  
11 A Because Robert Dobbs approached me.  
12 Q Did he ask you for the \$300,000?  
13 A Either him or Travis, or both.  
14 Q Did they tell you why IPM or Aries needed the  
15 additional \$300,000?  
16 A Further consolidation of debt.  
17 Q At that time in March, 2014 was Aries and IPM  
18 current in terms of their payments on the  
19 original October, 2013 loan?  
20 A I'm not sure, sir, but I believe so.  
21 Q You believe that they were?  
22 A I believe so. Yes, sir.  
23 Q If you'd turn your attention to Exhibit 6.  
24 This is a Wells Fargo Bank account statement  
25 for Silent Storm Holdings, LLC; correct?

1 T. McHugh, Jr. On the front page?  
2 A I do.  
3 Q For March of 2014?  
4 A Yes.  
5 Q It's a PMA account? Is that a yes?  
6 A What was your -- I'm sorry. What is your  
7 question?  
8 Q The account statement is for a PMA account?  
9 A Okay, yes.  
10 Q And this is one of your accounts; correct?  
11 A I believe so.  
12 Q If you could turn to the 4th page from the  
13 back, and it has a Bates labeled number of 61  
14 at the bottom, and you'll see a transaction  
15 history list; correct?  
16 A Yes.  
17 Q And the very last transaction on that page is  
18 dated 3/24 and it's an online transfer  
19 regarding the loan to IPM. Do you see that?  
20 A I do.  
21 Q And it's for \$300,000?  
22 A Yes.  
23 Q So you, in fact, did give IPM \$300,000 in  
24 March of 2014; right?  
25 BY MR. VILLMER:

1 Objection to the form of the question, but you  
 2 can answer.  
 3 BY THE DEPONENT:  
 4 I lent them.  
 5 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 6 Q Sorry. You, in fact, transferred the \$300,000  
 7 that you lent to IPM to them in March of 2014;  
 8 right?  
 9 A That's correct.  
 10 (DEFENDANT'S EXHIBIT NO. 8 MARKED)  
 11 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 12 Q If you would turn your attention to Exhibit 8,  
 13 Mr. McHugh.  
 14 A Yes.  
 15 Q This is an email chain which you were  
 16 forwarded in July, 2013. Do you see that?  
 17 BY MR. VILLMER:  
 18 Why don't you let him read the document. It's  
 19 a two page document.  
 20 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 21 Q Do you need time to read the document, Mr.  
 22 McHugh?  
 23 A If you want me to comment on it, yes.  
 24 Q Sure. Please go right ahead.  
 25 A Thanks. Okay.

1 Objection, calls for speculation, but you can  
 2 answer.  
 3 BY THE DEPONENT:  
 4 Can you state your question again?  
 5 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 6 Q Sure. Earlier you mentioned that you had  
 7 discussions with Dr. Florete at PCLS regarding  
 8 the loan; correct?  
 9 A Correct.  
 10 Q And that was prior to the October, 2013 loan  
 11 being made; right?  
 12 A Correct.  
 13 Q This email references a trip of Dr. Florete to  
 14 PCLS on the dates of August 15th and August  
 15 16th; right?  
 16 A Yes.  
 17 Q Was the August 15th and August 16th trip that  
 18 was referenced in this mail the trip that  
 19 Florete took to PCLS where you talked about  
 20 the loan with them?  
 21 A I'm not sure.  
 22 Q You're not sure. Would this have been about  
 23 -- would August have been about that general  
 24 timeframe?  
 25 A Perhaps.

1 Q So what is in Exhibit 8 is an email regarding  
 2 Dr. Florete's practice that you were forwarded  
 3 in July of 2013; correct?  
 4 A I believe so.  
 5 Q And the underlying email is from Chris Kemp to  
 6 several individuals at PCS?  
 7 A Yes.  
 8 Q And he's giving generally a status update with  
 9 regard to Dr. Florete; right?  
 10 A Yes.  
 11 Q And then Todd Seder? Is that -- did I say  
 12 that right?  
 13 A Seder.  
 14 Q Todd Seder, forwarded that email to you and  
 15 said, "Here's the update from Chris. He's  
 16 doing a great job of staying on top of Dr.  
 17 Florete, and building the foundation of a  
 18 strong long lasting relationship. Will you be  
 19 available August 15th and 16th to reschedule  
 20 the trip?" Did I read that correctly?  
 21 A Yes.  
 22 Q Was that trip referencing the trip you were  
 23 talking about when Dr. Florete came to visit  
 24 PCLS?  
 25 BY MR. VILLMER:

1 Q Do you think it was earlier than August?  
 2 A I don't know.  
 3 (GOVERNMENT'S EXHIBIT NO. 9 MARKED)  
 4 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 5 Q If you could look at Exhibit 9, and this is an  
 6 email titled Dr. Florete's Flights. Do you  
 7 see that?  
 8 A Okay.  
 9 Q And this email attaches a flight itinerary for  
 10 Orlando G. Florete and Christopher Scott Kemp;  
 11 right?  
 12 A It appears to be.  
 13 Q Did PCLS fly Chris Kemp and Dr. Florete up  
 14 to Charlotte to visit PCLS's lab?  
 15 A I'm unsure.  
 16 Q They got there somehow, right, at some point?  
 17 A Yes.  
 18 Q And in the second email from the bottom on the  
 19 first page Ms. Kass notes, "Hi, Guys, please  
 20 see below for Dr. Florete's August 15th and  
 21 16th trip here"; right?  
 22 A Yes.  
 23 Q And then later on July, 2019 Mr. Seder, in  
 24 response to a question about their car  
 25 arrangements it says, "Please check with Phil.

1 BY MR. VILLMER:  
2 Objection, calls for speculation, but you can  
3 answer.  
4 BY THE DEPONENT:  
5 Say your question again. I'm sorry.  
6 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
7 Q Do you know why Mr. Kumar sent you this email  
8 asking you about a \$50,000 investment to humor  
9 Dr. Florete?  
10 BY MR. VILLMER:  
11 Objection, calls for speculation. You can  
12 answer.  
13 BY THE DEPONENT:  
14 I do not.  
15 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
16 Q Do you remember discussing this with Mr.  
17 Kumar?  
18 A No.  
19 Q And this email's in June of 2014; right?  
20 A Yes.  
21 Q So in June of 2014 employees at PCLS, Mr.  
22 Kumar, yourself and Paul Smith, were on an  
23 email chain about investing \$50,000 to humor  
24 Dr. Orlando Florete; correct?  
25 A How I'm understanding this email is asking for

1 sponsorship for a certain organization. I  
2 have no idea about that organization or why it  
3 would humor Dr. Florete.  
4 Q You would agree with me that Mr. Kumar uses  
5 Orlando at the beginning of the email; right?  
6 A Yes.  
7 Q And that's referring to Dr. Orlando Florete?  
8 A I believe so.  
9 Q And then he asks, "I don't see the upside of  
10 this investment we are just doing this to  
11 humor him." "Him," referring to Dr. Florete;  
12 correct?  
13 A Yes.  
14 Q And he asks for your opinion on the matter?  
15 A Yes.  
16 Q When you made the October, 2013 loan to Dr.  
17 Florete did you consider whether that would  
18 improve his relationship with PCLS?  
19 A Define the question more.  
20 Q Sure. You mention that at some point in time  
21 Orlando Florete referred samples to PCLS;  
22 right?  
23 A Correct.  
24 Q And Dr. Florete in general in his practice was  
25 a pain management practice; right?

1 A Correct.  
2 Q And that's a type of doctor that would refer  
3 samples to PCLS; right?  
4 A Yes.  
5 Q And so, when you made the loan to Dr. Florete  
6 as someone who could potentially refer samples  
7 to PCLS, did you consider whether making that  
8 loan to him would improve PCLS's business  
9 relationship with Dr. Florete?  
10 BY MR. VILLMER:  
11 Objection to the form of the question, but you  
12 can answer.  
13 BY THE DEPONENT:  
14 No.  
15 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
16 Q Didn't consider it at all?  
17 BY MR. VILLMER:  
18 Objection, asked and answered, but you can  
19 answer.  
20 BY THE DEPONENT:  
21 Correct.  
22 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
23 Q Did you consider at all whether making a 1.7  
24 million dollar loan to Dr. Florette in October  
25 of 2013 would impact his relationship with

1 PCLS at all?  
2 A Yes.  
3 Q In what way did you consider that?  
4 A I asked my attorney if this was legal.  
5 Q And what attorney was that?  
6 A Anna Winger.  
7 Q You mentioned you asked her if it was legal.  
8 What do you mean by legal?  
9 A Compliant.  
10 Q Did you ask her whether or not making this  
11 loan would violate the Anti-Kickback Statute?  
12 A Yes.  
13 Q When did you do that?  
14 A Before the loan.  
15 Q It's your testimony that you asked Ms. Winger  
16 that prior to the October, 2013 loan?  
17 BY MR. VILLMER:  
18 Objection, asked and answered, but you can  
19 answer.  
20 BY THE DEPONENT:  
21 Correct. I remember saying any and all  
22 aspects of the loan as long as it was  
23 compliant.  
24 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
25 Q My question was did you specifically ask Ms.

1 Winger whether or not the loan complied with  
2 the Anti-Kickback Statute.  
3 BY MR. VILLMER:  
4 Objection, asked and answered, but you can  
5 answer.  
6 BY THE DEPONENT:  
7 I believe so.  
8 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
9 Q Do you know for sure?  
10 BY MR. VILLMER:  
11 Objection, asked and answered, but you can  
12 answer.  
13 BY THE DEPONENT:  
14 I believe so.  
15 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
16 Q You said, "I believe so." Is that a  
17 definitive yes.  
18 BY MR. VILLMER:  
19 Objection to the form of the question, but you  
20 can answer.  
21 BY THE DEPONENT:  
22 I believe so.  
23 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
24 Q When you say, "I believe so," does that mean  
25 definitively your testimony is that, yes, you

1 did ask Ms. Winger prior to October, 2013  
2 specifically whether or not the loan to Dr.  
3 Florete would violate the Anti-Kickback  
4 Statute?  
5 BY MR. VILLMER:  
6 Objection to the form of the question.  
7 Objection asked and answered, but you can  
8 answer.  
9 BY THE DEPONENT:  
10 Correct.  
11 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
12 Q Are you aware that Ms. Winger testified that  
13 you did not?  
14 A I am not.  
15 Q Did you ask Ms. Winger orally? Did you put  
16 anything in writing?  
17 BY MR. VILLMER:  
18 Objection to the form of the question, but you  
19 can answer.  
20 BY THE DEPONENT:  
21 I believe it was orally.  
22 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
23 Q What did you tell Ms. Winger about the loan  
24 when you asked her whether or not it was  
25 legal?

1 A Ask your question again.  
2 Q Sure. I'm just -- I'm trying to understand  
3 the specifics of how you asked Ms. Winger  
4 about the legality of the loan and/or whether  
5 or not it complied with the Anti-Kickback  
6 Statute. Did you just generally ask her is it  
7 legal? Did you provide her with any specific  
8 facts regarding the loan?  
9 BY MR. VILLMER:  
10 Objection to the form of the question. You  
11 can answer.  
12 BY THE DEPONENT:  
13 Yes, I did supplier her with all the  
14 information about who Dr. Florete was and that  
15 he was a referring doctor to the laboratory,  
16 and that if it was compliant and would -- is  
17 legal in order to provide a loan to him.  
18 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
19 Q Did Ms. Winger give you an answer?  
20 A She did.  
21 Q What was that answer?  
22 A That is was legal and compliant.  
23 Q Did she give you an answer specific to the  
24 Anti-Kickback Statute, or did she just say  
25 generally it was legal and compliant?

1 BY MR. VILLMER:  
2 Objection to the form of the question, but you  
3 can answer.  
4 BY THE DEPONENT:  
5 She provided all the information stating that  
6 it was a legal and compliant loan.  
7 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
8 Q Did Ms. Winger tell you specifically the loan  
9 did not violate the Anti-Kickback Statute?  
10 A It was either her or another attorney.  
11 Q Do you know who that other attorney was?  
12 A It was an attorney that was on Dr. Florete's  
13 side. Later on it was also Trish, and I  
14 forget her last name. Markus sounds familiar.  
15 And then last but not least there was a fourth  
16 attorney, Jane Pine Wood who the laboratory  
17 worked with for a number of years who was  
18 known in the nation as a healthcare compliant  
19 attorney, and she said specifically that the  
20 loan was compliant and it was okay to do. I'm  
21 sorry. I can't hear.  
22 Q Sure. Let's take those in turn. You  
23 mentioned there was a lawyer on Dr. Florete's  
24 side.  
25 A Yes.

1 --- legalities. So -- so in other words, I  
2 reviewed it again. And I'm not sure if I  
3 reviewed it again before -- in March, whatever  
4 date.

5 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

6 Q They're separate loans; right?

7 A They are. A modification.

8 Q And I think we've talked about the October,  
9 2013 loan and what advice you sought there;  
10 right?

11 A Correct.

12 Q I'm just trying to figure out if with regard  
13 to the March, 2013 loan you resought advice or  
14 the advice you were relying on would have been  
15 the same advice that you received back in  
16 October.

17 BY MR. VILLMER:

18 Objection to the form of the question, but you  
19 can answer.

20 BY THE DEPONENT:

21 And that I'm unsure of if -- if I gained any  
22 more insight to March compared to the other  
23 date for the loan.

24 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

25 Q And that applies to all the attorneys that

1 you've listed previously; right? Ms. Winger,  
2 the lawyer on Florete's side, Ms. Markus and  
3 Ms. Wood; right?

4 BY MR. VILLMER:

5 Objection to the form of the question, but you  
6 can answer.

7 BY THE DEPONENT:

8 I believe so.

9 BY MR. JOHNSON:

10 Let's take a five minute break.

11 (OFF THE RECORD)

12 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

13 Q Did you ever obtain any written opinion from  
14 any lawyer retained by you regarding the  
15 October, 2013 loan's compliance with the Anti-  
16 Kickback Statute?

17 A Yes.

18 Q Who was that written opinion from?

19 A Trish Markus.

20 Q Was that the opinion that she provided in  
21 October of 2014?

22 A I don't know what date it was.

23 Q We can look at it.

24 A I'm sorry?

25 Q I said we can look at it.

1 A Okay.

2 Q Other than Ms. Markus did you retain -- other  
3 than Ms. Markus did you receive any other  
4 written opinions from any lawyer regarding the  
5 October, 2013 loan's compliance with the AKS?

6 A I'm unsure.

7 Q Same question as to the March, 2014  
8 modification. Have you obtained any written  
9 opinion from a lawyer retained by you  
10 regarding the March, 2014 loan modification?

11 A Unsure.

12 Q You mentioned with regard to when you first  
13 loaned Florete the money that you were big in  
14 the lending institutions and individuals  
15 money. Do you remember that?

16 A I do.

17 Q In 2013 how many loans did you make to  
18 individuals or institutions?

19 A Approximately two dozen.

20 Q For those 24 loans were any of them PCLS  
21 customers?

22 A There was one other.

23 Q Who was that?

24 A I believe his name was Jayachandran.

25 Q Dr. Sanker Jayachandran?

1 A Yeah.

2 Q Jayachandran. I've always said it as  
3 Jayachandran. I learned it yesterday that it  
4 was pronounced Jayachandran (different  
5 pronunciation). Is that who you're referring  
6 to?

7 A Yes.

8 Q Any other PCLS customers that you've made  
9 loans to?

10 A I don't believe so.

11 Q Any other physicians or physician's practices  
12 that you've made loans to?

13 A I don't believe so.

14 Q Does that apply in any year or just 2013?

15 BY MR. VILLMER:

16 Objection to the form of the question, but you  
17 can answer.

18 BY THE DEPONENT:

19 Say your question again.

20 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

21 Q Sure. I believe I originally asked you  
22 specifically with respect to the year 2013 and  
23 the loans that you have made and you testified  
24 that the only physicians or physician  
25 practices to which you had made loans or Dr.

1 Florete's practice and Dr. Jayachandran;  
 2 right?  
 3 A Correct.  
 4 Q Have you, outside of that year, made any loans  
 5 to PCLS customers?  
 6 A I don't believe so.  
 7 Q Outside of that year have you made any loans  
 8 to physicians or physician practices?  
 9 A I don't believe so.  
 10 Q Dr. Florete eventually defaulted on his loan;  
 11 correct?  
 12 A He did.  
 13 Q I'm going to show you what's being marked as  
 14 Exhibits 11 and 12.  
 15 (GOVERNMENT'S EXHIBIT NOS. 11 AND 12 MARKED)  
 16 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 17 Q You sued him over that default; right?  
 18 A I did.  
 19 Q When did you sue him?  
 20 A I'm not exactly sure.  
 21 Q If you could turn your attention to Exhibit  
 22 11. This is a file stamp Final Summary  
 23 Deficiency Judgment Against Aries Medical  
 24 Corporation and Institute of Pain Management.  
 25 Do you see that?

1 and Florete owed you \$2,885,206 -- sorry. At  
 2 this point in the litigation Aries, IPM and  
 3 Florete owed you \$2,885,206.91?  
 4 BY MR. VILLMER:  
 5 Objection to the form of the question, but you  
 6 can answer.  
 7 BY THE DEPONENT:  
 8 Yes.  
 9 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 10 Q And there was a foreclosure sale of the  
 11 property that was mortgaged to you as  
 12 collateral scheduled; right?  
 13 A Yes.  
 14 Q And you, in fact, foreclosed on and sold that  
 15 collateral; right?  
 16 BY MR. VILLMER:  
 17 Objection to the form of the question, but you  
 18 can answer.  
 19 BY THE DEPONENT:  
 20 I believe so.  
 21 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 22 Q If you'd look at paragraph D it mentions that,  
 23 "The property was sold by Plaintiff, Silent  
 24 Storm, to an unrelated third party and closing  
 25 was held on March 20, 2019. The contract

1 A I do.  
 2 Q It's in the case that's captioned Silent Storm  
 3 Holdings, LLC verses Aries Medical, Institute  
 4 of Pain Management and Orlando Florete, and a  
 5 couple other Defendants? Do you see that?  
 6 A I do.  
 7 Q And this is the case that you were referring  
 8 to where you sued Orlando Florete and IPM for  
 9 their default on the loan?  
 10 A Yes.  
 11 Q If you'd turn your attention to page two.  
 12 Paragraph B of the court's order notes that  
 13 there was a final judgment -- summary judgment  
 14 of foreclosure for Plaintiff, being Silent  
 15 Storm, that was entered in the action on  
 16 January 13th, 2009 (sic) awarding Silent Storm  
 17 a total sum of \$2,885,206.91?  
 18 BY MR. VILLMER:  
 19 To clean up the record, it's 2019, not 2009.  
 20 BY MR. JOHNSON:  
 21 I apologize. Yeah, 2019.  
 22 BY THE DEPONENT:  
 23 Yes.  
 24 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 25 Q So at this point in the litigation IPM, Aries

1 sales price was \$431,000."  
 2 A Yes.  
 3 Q Was that the amount that you sold the property  
 4 Florete offered as collateral for the loan?  
 5 BY MR. VILLMER:  
 6 Objection to the form of the question, but you  
 7 can answer.  
 8 BY THE DEPONENT:  
 9 Yes.  
 10 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 11 Q And Exhibit 12, Mr. McHugh, is an affidavit  
 12 that you signed in support of that foreclosure  
 13 amount; correct?  
 14 BY MR. VILLMER:  
 15 Again, I just ask that you let him review it  
 16 first.  
 17 BY MR. JOHNSON:  
 18 Sure.  
 19 BY MR. VILLMER:  
 20 Thank you.  
 21 BY THE DEPONENT:  
 22 What was your question, Seth?  
 23 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 24 Q Exhibit 12 is an affidavit that you signed;  
 25 right?



1 A Yes.

2 Q And this affidavit sets forth the

3 circumstances of the foreclosure sale and the

4 foreclosure amount of \$431,000; right?

5 A Correct.

6 Q And it notes in paragraph five that there was

7 an unrelated party bid on the foreclosure sale

8 of \$250,000 worth of property?

9 A Yes.

10 Q And it notes in paragraph two that the

11 property that was foreclosed on and offered as

12 collateral is the 4243 Sunbeam Road,

13 Jacksonville, Florida property; right?

14 A I believe so. I'm not seeing the address on

15 here.

16 Q Sure. It's the second sentence. It says,

17 "The property at issue is known as 4243

18 Sunbeam Road, Jacksonville, Florida."

19 A Which paragraph are you on?

20 Q Paragraph two, top of the page.

21 A Thank you, yes.

22 Q And just to wrap that up. The Sunbeam Road

23 property that was Florete's office was the

24 property that you foreclosed on; right?

25 A One of them, yes.

1 Q There was two buildings?

2 A At least.

3 Q And you foreclosed on one?

4 A Multiple.

5 Q You foreclosed on multiple buildings from

6 Florete, Sunbeam properties being one of them;

7 right?

8 A Correct.

9 Q I believe you also foreclosed on a condo he

10 had?

11 A No.

12 Q But some type of personal real estate?

13 A No.

14 Q What other properties did you foreclose on

15 then?

16 A I'm in current foreclosure on a commercial

17 piece of land that's scheduled to foreclose

18 before the end of the year.

19 Q How much money does Orlando Florete currently

20 owe you with regard to the 2 million dollar

21 loan you made him?

22 A I'm not sure.

23 Q Does he still currently owe you money?

24 A He does.

25 Q Have you had any discussions with him

1 regarding the forgiveness of that debt?

2 A No.

3 Q Other than the property that you mentioned is

4 about to be foreclosed on, are there any other

5 steps that you're currently taking to recoup

6 the money that Dr. Florete owes you?

7 A Yes.

8 Q What steps are those?

9 A Technically I'm not sure how to describe it as

10 Eric Kolar is in charge of that.

11 Q Just in laymen's terms. Are you foreclosing

12 on property? Are you -- what are you doing?

13 A I'm attacking the situation as best possible

14 in order to recover the full value that is

15 outstanding.

16 Q As part of that attack what steps are you

17 taking?

18 A Hiring Eric Kolar to legally obtain as many

19 assets or -- to turn into cash equivalents as

20 possible.

21 Q Other than the one commercial property what

22 other assets of Florete's is that attorney

23 going after?

24 A I'm unsure.

25 Q Do you know if IPM was operating at a loss in

1 2013?

2 A I don't believe so.

3 Q Do you know for sure?

4 A I don't remember.

5 Q Do you know what Dr. Florete's credit score is

6 -- or was in 2013? Sorry.

7 A I don't remember.

8 Q Did you ever see a credit report on him?

9 A I don't remember.

10 Q You also mentioned that you made a loan to Dr.

11 Sanker Jayachandran; right?

12 A Yes.

13 Q How do you know Dr. Jayachandran?

14 A I don't know him.

15 Q Have you ever met him?

16 A Never.

17 Q What do you know about him?

18 A He's a pain care physician.

19 Q Do you know if he referred samples to PCLS?

20 A I do.

21 Q Do you know if he was referring samples to

22 PCLS at the time you made the loan?

23 A I do.

24 Q Was he?

25 A I believe so.

1 Q Do you know what the volume of the samples he  
2 was referring was?  
3 BY MR. VILLMER:  
4 Objection to the form of the question, but you  
5 can answer.  
6 BY THE DEPONENT:  
7 I do not know.  
8 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
9 Q What discussions did you have with Dr.  
10 Jayachandran prior to loaning him the money?  
11 A I did not.  
12 Q Have you ever -- you've never talked to him?  
13 A Never.  
14 Q How did it come to pass that you loaned Dr.  
15 Jayachandran money?  
16 A Manoj contacted me as far as a physician  
17 needing funds in order to purchase equipment,  
18 and because I had compliantly been given  
19 information that it was okay through Orlando I  
20 replicated that process with Jayachandran.  
21 Q So any advice of counsel that you relied on  
22 with the Dr. Jayachandran loan would have been  
23 the advice of counsel you received with regard  
24 to Dr. Florete's loan; correct?  
25 A Correct.

1 A Yes.  
2 Q And then if you will look back to the -- is  
3 that the promissory note for the \$50,000 loan  
4 that you made to Dr. Jayachandran?  
5 A I believe so.  
6 Q If you will turn your attention to the emails  
7 on the first page.  
8 A Yes.  
9 Q The first is an email from Mr. Kumar to  
10 yourself at your Silent Storms Holding email  
11 address. Do you see that?  
12 A Yes.  
13 Q And he says, "Phil, Attached is the promissory  
14 note that Dr. Jayachandran signed"; right?  
15 A Yes.  
16 Q He notes that he'll be depositing a check of  
17 \$75,000 in the SS account. I assume that  
18 refers to Silent Storm?  
19 A I don't know.  
20 Q You don't know. He notes that that would be  
21 for 50,000 that he had borrowed from his  
22 cousin, and 25,000 as his contribution to the  
23 promissory note; is that right?  
24 A That's what it -- that's what it appears to  
25 say here.

1 (GOVERNMENT'S EXHIBIT NOS. 13 AND 14 MARKED)  
2 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
3 Q Mr. McHugh, I am going to show you what has  
4 been marked as Exhibits 13 and 14. If you  
5 will first look at Exhibit 13.  
6 A I'm sorry. Say again?  
7 Q If you will first look at Exhibit 13.  
8 A Sure.  
9 Q Would you like a chance to review this  
10 document?  
11 A Only -- do you have questions about it?  
12 Q I do, but they may be self-explanatory.  
13 A Okay.  
14 Q So the attachment to this email is a  
15 promissory note between Dr. Sanker  
16 Jayachandran and M Holdings, LLC; right?  
17 A Yes.  
18 Q And M Holdings, LLC is a company of yours;  
19 right?  
20 A It is.  
21 Q Who has access to M Holdings' bank accounts?  
22 A Just myself, I believe.  
23 Q And it's for \$50,000?  
24 A The promissory note, yes.  
25 Q And it's dated in August of 2014?

1 Q Did Mr. Kumar contribute \$25,000 towards this  
2 loan?  
3 A He did.  
4 Q And you contributed the other \$25,000?  
5 A I did.  
6 Q And he notes a total of 50,000 needs to be  
7 wired into Dr. Jayachandran's account and  
8 gives you the account information; right?  
9 A Yes.  
10 Q And then you forwarded that email to Shayla  
11 Mujic. Did I say that right?  
12 A I believe so.  
13 Q Who is Ms. Mujic?  
14 A She was my assistant.  
15 Q And then you told her, "Shayla, here's the  
16 bank info below for the wire. 50K today  
17 please"; right?  
18 A Yes.  
19 Q And was that money wired to Dr. Jayachandran?  
20 A I believe so.  
21 Q Was Ms. Mujic your assistant at Silent Storms  
22 or your assistant at PCLS?  
23 A Silent Storm.  
24 Q She wasn't affiliated with PCLS in any way;  
25 right?

1 A Right.  
 2 Q Did anyone at PCLS know about the loan you  
 3 made to Dr. Jayachandran in August, 2014 when  
 4 you made it?  
 5 A I don't believe so.  
 6 Q Other than Mr. Kumar?  
 7 A Correct.  
 8 Q Did you tell anyone about the loan?  
 9 A I don't believe so.  
 10 Q Did you talk to PCLS Compliance about the  
 11 loan?  
 12 A I did not.  
 13 Q If you would turn your attention to -- never  
 14 mind. Let me ask you this. You mentioned  
 15 earlier that Mr. Kumar told you that Dr.  
 16 Jayachandran wanted the loan to purchase  
 17 equipment; right?  
 18 A I believe so.  
 19 Q Do you know what equipment that was?  
 20 A I'm not exactly sure.  
 21 Q Why did you make the loan to Dr. Jayachandran?  
 22 A Because it was compliant.  
 23 Q Notwithstanding it's compliance or non-  
 24 compliance, what specific reason did you make  
 25 the loan to Dr. Jayachandran?

1 do to determine that he would be able to pay  
 2 back the loan?  
 3 BY MR. VILLMER:  
 4 If you're going to ask him a question about a  
 5 document, I'd like for him to be able to  
 6 review the document.  
 7 BY MR. JOHNSON:  
 8 I said prior to turning to that document. I'm  
 9 not asking him a question about a document.  
 10 BY MR. VILLMER:  
 11 Okay.  
 12 BY THE DEPONENT:  
 13 I don't recall.  
 14 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 15 Q You don't recall what due diligence you did?  
 16 A Correct.  
 17 Q Do you know if you did any?  
 18 A I don't recall. Do you want me to review this  
 19 now, Seth?  
 20 Q Yeah, go ahead and look at document 14.  
 21 A Okay.  
 22 Q So Exhibit 14 is an email between yourself and  
 23 Mr. Kumar forwarding some other emails;  
 24 correct?  
 25 A Yes.

1 A Because one of my businesses was in the entity  
 2 of making loans to businesses as well as  
 3 individuals on a select basis.  
 4 Q Did you know when you made the loan whether or  
 5 not Dr. Jayachandran was a customer of PCLS?  
 6 A I did.  
 7 Q So you know that he was a customer?  
 8 A I did.  
 9 Q Did you consider at the time you made the loan  
 10 whether or not making a loan to a customer of  
 11 PCLS would impact the volume of samples that  
 12 he referred?  
 13 A No.  
 14 Q You didn't consider it one way or the other?  
 15 BY MR. VILLMER:  
 16 Objection, asked ---  
 17 BY THE DEPONENT:  
 18 No.  
 19 BY MR. VILLMER:  
 20 --- asked and answered, but you can answer.  
 21 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 22 Q If you could turn to Exhibit 14. Actually  
 23 before you look at Exhibit 14, Mr. McHugh,  
 24 prior to making the loan with Dr. Jayachandran  
 25 in August of 2014 what due diligence did you

1 Q And attached to these emails is the promissory  
 2 note with Dr. Jayachandran; right?  
 3 A Yes.  
 4 Q And you forwarded this to Mr. Kumar and note,  
 5 "They are investigating me on this now. How  
 6 the heck did they get this doc?" Do you see  
 7 that?  
 8 A I do.  
 9 Q Did -- how did PCLS eventually learn about  
 10 this loan?  
 11 A I told them.  
 12 Q Why did you tell them?  
 13 A They asked if -- Alan Campbell asked if I had  
 14 any other loans with physicians.  
 15 Q Did PCLS eventually learn about the Florete  
 16 loan as well?  
 17 A They did.  
 18 Q Did they learn about that one before the  
 19 Jayachandran loan?  
 20 A They did.  
 21 Q How did they learn about the Florete loan?  
 22 A I don't know.  
 23 Q Do you remember when that was?  
 24 A I do not.  
 25 Q What they did -- and I don't want you to go

1 into any attorney/client privilege specifics,  
 2 but PCLS did investigate the loans to Dr.  
 3 Jayachandran and Dr. Florete; right?  
 4 A They did.  
 5 Q And that's the investigation you're referring  
 6 to in this email to Mr. Kumar?  
 7 A I don't know.  
 8 Q Would you be referring to any other  
 9 investigation regarding the loan?  
 10 A I'm not sure on the time factor with your  
 11 question.  
 12 Q Let's go -- let's look at the initial email in  
 13 the -- in the chain.  
 14 A Okay.  
 15 Q It's an email from Matt Hughes (sic) attaching  
 16 the promissory note in October of 2014; right?  
 17 A Correct.  
 18 Q And then Matt emails yourself, Ms. Winger --  
 19 yourself and Ms. Winger and says, "Hi, guys.  
 20 This is what Womble Carlyle and the internal  
 21 PCLS review called me about. Let me know your  
 22 thoughts?"  
 23 A Correct. So it came from Womble Carlyle to  
 24 Matt Hodges, from Matt Hodges to myself.  
 25 Q Right. And this was with regard to the

1 Jayachandran loan; correct?  
 2 A Correct.  
 3 Q What was PCLS' ultimate response regarding the  
 4 Jayachandran and Florete loans?  
 5 A We conducted a independent investigation with  
 6 an outside expert. Jane Pine Wood gave a --  
 7 gave her summary that while the loans were  
 8 compliant ---  
 9 Q I don't -- we don't want to know about ---  
 10 BY MR. VILLMER:  
 11 Well, yeah. You're asking him a question and  
 12 he's going to answer the question. So please  
 13 allow him to finish answering the question.  
 14 BY MR. JOHNSON:  
 15 I don't want him to disclose privileged  
 16 information. Let me ---  
 17 BY MR. VILLMER:  
 18 Well then, don't ask him the question and he  
 19 won't.  
 20 BY THE DEPONENT:  
 21 I don't understand you. You asked what was  
 22 the result?  
 23 BY MR. JOHNSON:  
 24 Hold on.  
 25 BY MS. ARMSTRONG:

1 We're not asking what legal opinion you may  
 2 have obtained as a result of PCLS'  
 3 investigation ---  
 4 BY MR. VILLMER:  
 5 I don't mean to interrupt you. Can Seth tell  
 6 me what he's asking, and then we can talk  
 7 about this.  
 8 BY MR. JOHNSON:  
 9 I'm not asking regarding any legal opinion  
 10 that was given. I'm just asking regarding  
 11 actions that PCLS took.  
 12 BY MR. VILLMER:  
 13 What was the question though, so we can all be  
 14 clear.  
 15 BY MR. JOHNSON:  
 16 Sure.  
 17 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 18 Q As a result of the investigations into the  
 19 Florete and Jayachandran loan, what actions,  
 20 if any, did PCLS ultimately take?  
 21 BY THE DEPONENT:  
 22 Can I answer that?  
 23 BY MR. VILLMER:  
 24 Sure, yes.  
 25 BY THE DEPONENT:

1 We immediately stopped doing -- taking  
 2 referrals from these two doctors. We, as a  
 3 board, Joe Wiegall, Bob Smith, the chairman of  
 4 the board from American Express, so forth,  
 5 other members of the board, we all voted to  
 6 refund Government payers from any samples that  
 7 we had taken. I was asked to see if I could  
 8 reclaim the monies for the loans that had been  
 9 done. I was able to do that with  
 10 Jayachandran. I was not able to do that with  
 11 Florete. And those were the specific actions  
 12 that were taken from these loans.  
 13 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 14 Q Why weren't you able to reclaim the funds from  
 15 Dr. Florete?  
 16 A Because the loan amount was too large for him  
 17 to absorb all at once. A 2 million dollar  
 18 loan versus \$25,000 is world of difference.  
 19 Q Did Dr. Jayachandran also pay back the \$25,000  
 20 that Manoj Kumar loaned?  
 21 A I don't know.  
 22 Q You just know you got your \$25,000?  
 23 A I was asked to get my \$25,000 back and I did.  
 24 Q You mentioned ---  
 25 A And I provided that proof to PCLS. Alan

1 Campbell specifically.

2 Q You mentioned that the board voted to refund

3 Government payors of the samples related to

4 Florete and Jayachandran?

5 A Correct.

6 Q Did you have any personal involvement in

7 making a refund payment to Medicare?

8 A Never.

9 Q You didn't have any personal involvement?

10 BY MR. VILLMER:

11 Objection, asked and answered. You can

12 answer.

13 BY THE DEPONENT:

14 I had no involvement in billing receivables or

15 refunding any of the payors involved

16 throughout the history of PCLS.

17 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

18 Q Do you have any personal knowledge of whether

19 or not a repayment was made?

20 A Yes.

21 Q What's the extent of your personal knowledge?

22 A Seeing Alan Campbell a week later in the

23 hallways and asking him if it was done and he

24 said yes.

25 Q Other than your conversation in the hallway

1 A Perhaps Marcus -- I forget his last name.

2 Q Sowinski?

3 A No, sir. There was another Marcus in the

4 group and he was a controller that worked

5 under Paul Schmidt.

6 Q Do you know how much was reportedly repaid?

7 A Over 1 million dollars.

8 Q Do you know how that money was purportedly

9 repaid?

10 A It would have just been remunerated through

11 the computer system.

12 Q What do you mean by remunerated through the

13 computer system?

14 A I'm not sure as far as how to -- I've never

15 done a physical billing myself, but I just

16 know a bit about the process as far as it all

17 being computerized, so no.

18 Q Are you talking about a wire transfer?

19 A I don't know. I don't know if it would be a

20 wire transfer or just -- I don't know. Money

21 is constantly coming back and forth, and

22 perhaps we just said no to certain monies. I

23 don't know.

24 Q Do you know when that purported repayment was

25 made?

1 with Mr. Campbell regarding the repayment, any

2 other facts you know about it?

3 BY MR. VILLMER:

4 Objection to the form of the question. You

5 can answer.

6 BY THE DEPONENT:

7 I don't know why I would need any more facts

8 when the person that's in charge tells me that

9 something was done.

10 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

11 Q So to close the loop in this. The extent of

12 your personal knowledge about whether or not a

13 repayment was made was your conversation in

14 the hallway with Mr. Campbell?

15 A Not just to the extent. Joe Wiegall also

16 confirmed it.

17 Q Did you speak with Joe Wiegall?

18 A At some point, yes.

19 Q And what did he tell you regarding the

20 repayment?

21 A That it was done.

22 Q Did you speak to anyone else regarding the

23 repayment?

24 A I believe Bob Smith.

25 Q Anyone else?

1 A No.

2 Q Do you know who made the purported repayment?

3 A The people that were in charge, Paul Schmidt,

4 Alan Campbell, Marcus. I can't -- again, I

5 can't recall his last name. Can I look at my

6 phone?

7 Q Have you -- let me ask you this.

8 BY MR. VILLMER:

9 Just answer his questions.

10 BY THE DEPONENT:

11 Okay, sorry.

12 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

13 Q We can maybe get Marcus' last name on break.

14 A Sure.

15 Q Thanks for that. Have you seen any

16 documentation regarding the purported

17 repayment?

18 A No.

19 Q Again, without telling me anything that could

20 be attorney/client privilege with PCLS, do you

21 know whether or not PCLS followed HHS OIG

22 self-reporting protocol with regard to either

23 the Jayachandran or Florete loan?

24 BY MR. VILLMER:

25 Objection. Calls for a legal conclusion. You

1 email Dinah Myers?  
 2 A It is.  
 3 Q So you hadn't obtained any business from Mr.  
 4 Kumar or Dr. Tiwari's practice in 2009;  
 5 correct?  
 6 BY MR. VILLMER:  
 7 Objection to the form of the question, but you  
 8 answer.  
 9 BY THE DEPONENT:  
 10 I don't believe so.  
 11 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 12 Q At some point Mr. Kumar became an independent  
 13 contractor for PCLS; right?  
 14 A Yes.  
 15 Q How did that come about?  
 16 A Dr. Tiwari's clinics were closed. He had  
 17 completed everything that he was working on  
 18 out in Indiana and was looking for additional  
 19 work.  
 20 Q Do you know why Dr. Tiwari's clinic closed?  
 21 A He was doing unscrupulous things.  
 22 Q Was he indicated on healthcare fraud?  
 23 A I don't know.  
 24 Q You mentioned Mr. Kumar was looking for work.  
 25 Did he reach out to PCLS, did PCLS reach out

1 to him?  
 2 A I don't remember.  
 3 Q Who at PCLS was involved in hiring Mr. Kumar  
 4 as an independent contractor?  
 5 A John Grove, Marcus Sowinski, myself, Sandy  
 6 Weaver, probably and Doug Smith, too, and  
 7 probably also Joe Wiegall.  
 8 Q What was Mr. Wiegall's role in hiring Mr.  
 9 Kumar?  
 10 A I don't really know specifically.  
 11 Q What was Dr. Smith's role in hiring Mr. Kumar?  
 12 A Sounding board.  
 13 Q What about Ms. Weaver?  
 14 A Clerical.  
 15 Q Is that processing paperwork, that kind of  
 16 thing?  
 17 A Correct.  
 18 Q What about Mr. Sowinski's role?  
 19 A Compliance, legal, sounding board.  
 20 Q What about Mr. Grove's role?  
 21 A Working with all the independent contractors,  
 22 training.  
 23 Q So is it that Mr. Grove would have been the  
 24 one who trained Mr. Kumar when he came onboard  
 25 PCLS?

1 A One of them.  
 2 Q Did he have any other role in Mr. Kumar's  
 3 hiring?  
 4 A I would say general input.  
 5 Q What was your role in Mr. Kumar's hiring?  
 6 A The same of everyone else's.  
 7 Q But you described various different roles for  
 8 each of those individuals. So what  
 9 specifically was your role?  
 10 A Understanding of the person coming --  
 11 understanding the person coming onboard where  
 12 and how they fit into the organization.  
 13 Confirming with all the other individuals if  
 14 they would concur, and being able to make sure  
 15 that everything would get executed.  
 16 Q Who communicated with Mr. Kumar regarding his  
 17 hiring as an independent contractor?  
 18 A The entire team.  
 19 Q How did they do that? Email, phone?  
 20 A Correct.  
 21 Q Both?  
 22 A Yes.  
 23 Q What specifically did Marcus Sowinski do in  
 24 terms of compliance and legal with regard to  
 25 hiring Manoj Kumar?

1 A I don't quite recall.  
 2 (GOVERNMENT'S EXHIBIT NO. 16 MARKED)  
 3 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 4 Q Mr. McHugh, I'm going to show you what's been  
 5 marked as Government's Exhibit 16.  
 6 A Okay.  
 7 Q Exhibit 16 is an email chain between yourself  
 8 and Mr. Kumar in December of 2019 that was  
 9 ultimately forwarded to Mr. Sowinski; correct?  
 10 A That's correct.  
 11 Q And there's no one else on this email chain  
 12 between yourself and Mr. Kumar until it was  
 13 forwarded to Mr. Sowinski; right?  
 14 A Not that I know of.  
 15 Q None depicted in the document; right?  
 16 A It appears that way, yes.  
 17 Q And when you forwarded it to Mr. Sowinski Mr.  
 18 Kumar was not copied; right?  
 19 A It appears that way.  
 20 Q The initial email in December 11, 2010 is you  
 21 writing to Mr. Kumar; right?  
 22 A Yes.  
 23 Q And you discuss several different potential  
 24 roles with Mr. Kumar at PCLS; right?  
 25 A Yes.

1 A No, that's okay.  
 2 Q I'll ask a -- before hiring -- it's fine.  
 3 Before PCLS hired Mr. Kumar as an independent  
 4 contractor you were aware that he had been  
 5 paid for some services that he did with Dr.  
 6 Shah?  
 7 A Yes.  
 8 Q Same thing with Dr. Masimore?  
 9 BY MR. VILLMER:  
 10 Objection, asked and answered, but you can  
 11 answer.  
 12 BY THE DEPONENT:  
 13 Yes, to him, too.  
 14 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 15 Q What did Mr. Kumar do in his role as an  
 16 independent contractor for PCLS?  
 17 A He helped in a number of different categories.  
 18 Q Could you expound a little bit on those?  
 19 A He helped with data entry, offshoring that.  
 20 He helped manage or/and organize our billing  
 21 of the laboratory. He ran his own independent  
 22 sales team, and he would also meet with  
 23 physicians himself.  
 24 Q That independent sales team, they would have  
 25 been employed by MK Land Holdings; correct?

1 A Yes.  
 2 Q The subject is "future"?  
 3 A Yes.  
 4 Q And you write, "Hey, buddy. I wanted to put  
 5 this in writing and then discuss," and then  
 6 you list some job characteristics such as  
 7 position, title, description, salary,  
 8 commission, current revenue, that kind of  
 9 thing?  
 10 A Yes.  
 11 Q Was this in regard to Mr. Kumar's transition  
 12 to a W-2 employee at PCLS?  
 13 A It appears that way.  
 14 Q And the position title there is "to be  
 15 determined." Do you know what Mr. Kumar's  
 16 ultimate position title as an employee at PCLS  
 17 was?  
 18 A I do not.  
 19 Q The description is, "To manage all aspects of  
 20 1099 relations while adding and implementing  
 21 additional channel partnerships." Is that  
 22 what Mr. Kumar ended up doing as an employee  
 23 at PCLS?  
 24 A I believe so.  
 25 Q Did he do any -- have any other job duties as

1 A That's correct.  
 2 Q Any other job duties that Mr. Kumar had as an  
 3 independent contractor?  
 4 A That was pretty much it.  
 5 BY MR. JOHNSON:  
 6 Let's take a -- let's take a five minute  
 7 break.  
 8 (OFF THE RECORD)  
 9 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 10 Q When we broke, Mr. McHugh, we were talking  
 11 about Mr. Kumar's role at PCLS as an  
 12 independent contractor. Did Mr. Kumar  
 13 ultimately become an employee of PCLS?  
 14 A Yes.  
 15 Q When was that?  
 16 A I don't recall.  
 17 Q Whose idea was it to convert Kumar from an  
 18 independent contractor to an employee?  
 19 A I don't remember.  
 20 (GOVERNMENT'S EXHIBIT NO. 18 MARKED)  
 21 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 22 Q I'm going to show you what's been marked as  
 23 Government's Exhibit 18. This is an email  
 24 from yourself to Mr. Kumar in September of  
 25 2012; correct?

1 an employee?  
 2 A I'm not sure.  
 3 Q Salary, you mentioned, "\$80,000, plus  
 4 healthcare, 401K, and other fun perks." Do  
 5 you know if that was the salary that Mr. Kumar  
 6 was ultimately paid?  
 7 A I do not.  
 8 Q Commission you note, ".001 percent of all  
 9 income from channel partners." Would that be  
 10 the channel partners that Mr. Kumar was  
 11 managing the 1099 relations for?  
 12 A No.  
 13 Q What channel partners would those be?  
 14 A All channel partners.  
 15 Q So every channel partner of PCLS?  
 16 A I believe so.  
 17 Q And for the record, what is a channel of PCLS?  
 18 A Someone that is marketing for PCLS.  
 19 Q So a sales representative?  
 20 A Essentially.  
 21 Q You note, "Current revenue, approximately 2.5  
 22 million per month which would translate into  
 23 2,500 per month in commissions." That would  
 24 be the commissions from the channel partners  
 25 described above; right?

1 A I believe so.

2 Q And finally you note in the proposal to Mr.

3 Kumar, "In addition, you keep all business and

4 revenues flowing from current book of

5 business, approximately 30K per month." Is

6 that the commissions that Mr. Kumar was

7 receiving as an independent contractor?

8 A I believe so.

9 Q And that would include commissions from Dr.

10 Masimore's practice; correct?

11 A I don't know.

12 Q Was Dr. Masimore's practice one of the

13 practices that Manoj Kumar received

14 commissions for as an independent contractor?

15 A I'm not sure.

16 Q Same thing as with Dr. Shah. Do you know if

17 Manoj Kumar received commissions based on

18 samples referred from Dr. Shah's practice as

19 an independent contractor?

20 A I do not.

21 Q You don't know whether or not he kept those

22 commissions as an employee?

23 A I do not.

24 BY MR. VILLMER:

25 Objection to the form of the question, but you

1 the document before answering the question.

2 BY THE DEPONENT:

3 Do you have this in larger print?

4 BY MS. ARMSTRONG:

5 That's all we have.

6 BY MR. JOHNSON:

7 We do not.

8 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

9 Q Mr. McHugh, this is a lengthy document. I'm

10 going to ask you questions on just very

11 specific parts of it. So I don't think you

12 need to take the time to read the whole thing

13 through. Just generally ---

14 A How long should I read?

15 BY MR. VILLMER:

16 Just read over the document before you ask

17 your questions about it, please.

18 BY MR. JOHNSON:

19 I don't ---

20 BY MR. VILLMER:

21 And we're not stalling time or anything. Just

22 let him look at the document you've handed him

23 before you ask him questions about it. I

24 think that's a fair thing.

25 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

1 can answer.

2 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

3 Q But your email references keeping all of his

4 current book of business, i.e commissions;

5 correct?

6 A Correct.

7 Q You note, "As previously discussed, PCLS will

8 put phantom shares into the employment

9 contract." What do you mean by that?

10 A We had phantom shares of equity for people

11 that exhibited -- I don't know how to classify

12 it. Outstandingness for the company. There

13 were, I believe, five individuals that upon a

14 sale or transfer of business entity of PCLS,

15 these five individuals would be -- would take

16 part in the financial reward.

17 Q So they would receive a payout based on the

18 phantom shares they had?

19 A Essentially.

20 (GOVERNMENT'S EXHIBIT NO. 19 MARKED)

21 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

22 Q Do you recognize the document in Exhibit 19,

23 Mr. McHugh?

24 BY MR. VILLMER:

25 And I would say just take a moment to review

1 Q Mr. McHugh, just let me know generally if

2 you've seen this document before.

3 A I believe that I have.

4 Q What do you believe it to be?

5 A The title of it says Employment Agreement.

6 Q And it's an employment agreement between PCLS

7 and Manoj Kumar; correct?

8 A Yes.

9 Q Dated and entered into as of February 4th,

10 2013?

11 A Yes.

12 Q And I'm going to ask you to turn all the way

13 to what is Bates labeled 28426. Do you see

14 that page?

15 A Yes.

16 Q And there's signatures on this page; correct?

17 A Yes.

18 Q And one of those is Manoj Kumar?

19 A Yes.

20 Q As the employee?

21 A Yes.

22 Q And the other is your signature; correct?

23 A Yes.

24 Q On behalf of PCLS?

25 A Yes.



1 right?

2 A Yes.

3 Q SLP one of those companies?

4 A Yes.

5 Q Did you -- did PCLS have a marketing agreement

6 with SLP?

7 A Yes.

8 Q What are some other companies that set up

9 desktop analyzers that PCLS had a marketing

10 agreement with?

11 A I can't recall the names right now. There

12 were many.

13 Q What about ADS?

14 A Yes. Although I'm not sure if there was

15 anything formally, but I do recall that there

16 was something more formal with SLP. Maybe 10

17 more minutes we can take a break?

18 Q Yeah, that would be a good time.

19 (GOVERNMENT'S EXHIBIT NO. 27 MARKED)

20 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

21 Q If you could turn your attention to what's

22 been marked as Exhibit 27.

23 A Okay.

24 Q Have you seen this email before, Mr. McHugh?

25 A I don't recall it.

1 not pay much for the service." Did I read

2 that correctly?

3 A Yes.

4 Q What is your understanding of Mr. Kumar's

5 proposal here?

6 A My understanding is he was suggesting

7 essentially some form of, I believe, a

8 management program, or a -- as he referenced

9 here, a package program, in order to create a

10 tighter network with us and physicians as it

11 -- as it sound like on here.

12 Q Was the management program suggested by Mr.

13 Kumar ever implemented?

14 A No.

15 Q Why not?

16 A Because I think for like his last sentence,

17 "Want to add more to your overflowing plate."

18 It was -- I don't know exactly why we never

19 did it. Just like as an organization we

20 discussed many times of selling or providing

21 cups into the field, as you discussed earlier,

22 but that was something that we never entered

23 into also. We had also heard our competition

24 was buying desktop analyzers and playing them

25 out into the field. That is something that

1 Q It's an email from Mr. Kumar to yourself and

2 Mr. Sowinski; correct?

3 A Yes.

4 Q In February of 2011?

5 A Yes.

6 Q And Mr. Kumar writes, "This is a followup on

7 my earlier email on a simplified analysis of

8 the current trend in CPT codes." Skipping

9 ahead. "The trend is clear. The great window

10 of making money for the physicians by UDS

11 screening is closing fast unless they keep

12 pace with the changing scenario." I believe

13 that this is a stage where we step in by

14 offering them a package deal of basically

15 setting up their moderate complexity lab

16 wherein they are assured that our lives are

17 intertwined and that we are vested in their

18 progress." He notes a few points of concerns,

19 and therefore says, "Therefore, if we have a

20 package that assures them that they can get

21 the certification, get the right equipment and

22 compliance monitoring at some cost they would

23 be interested, as that would allow them to

24 continue billing and collecting money. Keep

25 in mind, they want to get the money and yet

1 PCLS discussed at length and decided never to

2 do also. Why did specifically we not take --

3 take part in this program that Manoj is

4 saying? I can't say for exact bullet point

5 reasons of why we did not. I just know that

6 instead of doing this we partnered with

7 companies that we would provide information to

8 the doctors and allow those other companies to

9 do what they do.

10 Q Let me back up a little bit. You mentioned

11 that you heard that competitors were buying

12 desktop analyzers and placing them in doctors'

13 practices; correct?

14 A Yes.

15 Q Who -- what competitors were those?

16 A I can't remember the names for them right now.

17 Q But those would have been other urine drug

18 labs right?

19 A Correct.

20 Q And it's your testimony that PCLS, with regard

21 to analyzers, would partner with the analyzer

22 company to suggest that company to doctors;

23 right?

24 A Essentially, yes.

25 Q Did PCLS ever -- or anyone at PCLS ever

1 negotiate with those analyzer companies on  
2 behalf of the doctors?  
3 A What do you mean by negotiate?  
4 Q Let's say negotiate price for the analyzer.  
5 A I'm not sure.  
6 Q What would be the extent of PCLS's involvement  
7 once the introduction to the analyzer company  
8 was made?  
9 BY MR. VILLMER:  
10 Objection to the form of the question. You  
11 can answer.  
12 BY THE DEPONENT:  
13 Say -- say the question again, please? What  
14 was our extent what?  
15 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
16 Q Sure. You mentioned that as, you know, with  
17 regard to analyzers PCLS would, you know, in  
18 some circumstances had marketing agreements  
19 with an analyzer company, and in other  
20 circumstances just had a company they would  
21 recommend to physician practices; correct?  
22 A Correct.  
23 Q And so, at some point PCLS would introduce the  
24 analyzer company, such as SLP, and the  
25 physician practice; right? Put them in

1 contact?  
2 A Correct.  
3 Q After that point what was PCLS's involvement  
4 in the physician setting up or acquiring a  
5 desktop analyzer?  
6 A Our involvement was nothing official. If we  
7 talked about it in as a matter of how is the  
8 program going, how is the person doing for  
9 you, how is select labs doing, just as far as  
10 a followup, because if we were recommending a  
11 company or placing two people in touch with  
12 each other we knew that it was essentially a  
13 representation of us and we wouldn't want  
14 anything to happen to a doctor feeling like  
15 nothing was going on. So there was nothing  
16 official.  
17 Q It sounds like PCLS would essentially monitor  
18 the arrangement between the analyzer company  
19 and the physicians?  
20 A To some degree.  
21 BY MR. JOHNSON:  
22 I think you mentioned you wanted a break. We  
23 can go ahead and take that now.  
24 BY THE DEPONENT:  
25 Sounds good.

1 (OFF THE RECORD)  
2 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
3 Q Do you know a Dr. John Nickels?  
4 A Yes.  
5 Q How do you know him?  
6 A Pain care physician working with the  
7 laboratory.  
8 Q Did Dr. Nickels refer samples to PCLS?  
9 A Yes.  
10 Q Do you know what time period Dr. Nickels  
11 referred samples to PCLS?  
12 A No.  
13 Q When did you first meet Dr. Nickels?  
14 A I don't know.  
15 Q Did you ever meet with Dr. Nickels in person?  
16 A Yes.  
17 Q Where was that?  
18 A At his office.  
19 Q And that's in Cleveland?  
20 A I don't remember.  
21 Q Why did you meet with Dr. Nickels in person in  
22 his office?  
23 A I don't remember exactly.  
24 Q Did you have any involvement with setting up  
25 an analyzer lab in Dr. Nickels' practice?

1 BY MR. VILLMER:  
2 Objection to the form of the question, but you  
3 can answer.  
4 BY THE DEPONENT:  
5 No.  
6 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
7 Q Did you have any involvement with attempting  
8 to set up an analyzer lab in Dr. Nickels'  
9 practice?  
10 BY MR. VILLMER:  
11 Objection to the form of the question. You  
12 can answer.  
13 BY THE DEPONENT:  
14 No.  
15 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
16 Q Did you have anything to do whatsoever with  
17 Dr. Nickels procuring a desktop analyzer?  
18 A I don't remember.  
19 Q Did you have anything to do whatsoever with  
20 Dr. Nickels attempting to procure a desktop  
21 analyzer?  
22 A I don't remember.  
23 Q Did you ever receive a request from Dr.  
24 Nickels to pay expenses related to setting up  
25 a desktop analyzer lab?

1 A I believe so.  
 2 Q Did you ever pay those expenses?  
 3 A No.  
 4 Q Did you ever give Manoj Kumar money to pay  
 5 those expenses?  
 6 A Not that I remember.  
 7 Q Did you ever direct Manoj Kumar to pay any of  
 8 Dr. Nickels' expenses?  
 9 A No.  
 10 Q Do you know if Manoj Kumar ever paid any of  
 11 Dr. Nickels' expenses?  
 12 A No.  
 13 Q That's no, you don't know whether he did?  
 14 BY MR. VILLMER:  
 15 Objection to the form of the question, but you  
 16 can answer.  
 17 BY THE DEPONENT:  
 18 Correct. No, I do not have any knowledge.  
 19 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 20 Q I'm going to show you what's being marked as  
 21 Exhibit 28.  
 22 (GOVERNMENT'S EXHIBIT NO. 28 MARKED)  
 23 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 24 Q Have you ever seen this email before?  
 25 A I have.

1 expenditure is another \$2,000 for CLC,  
 2 approximately \$1,000 for consumables, and  
 3 \$1,500 for the first month for the lab  
 4 director." Did I read that correctly?  
 5 A Yes.  
 6 Q What's the lab director?  
 7 A Someone that is director of a lab.  
 8 Q What does a lab director do?  
 9 A I don't know.  
 10 Q You don't know what specific duties a lab  
 11 director would have directing a lab?  
 12 A I'm not sure that I can adequately answer  
 13 that. I might leave out some duties,  
 14 responsibilities.  
 15 Q The duties that you know of, what are they?  
 16 A They're in charge of a lab.  
 17 Q And this would be an in-house lab at a  
 18 physician's office could have a lab director;  
 19 correct?  
 20 A Say your question again?  
 21 Q Sure. If a physician had an in-house lab at  
 22 their practice, that lab could have a lab  
 23 director; correct?  
 24 A Yes.  
 25 Q Mr. Kumar asked if you could send him a check

1 Q And this email subject is J. Nickels?  
 2 A Yes.  
 3 Q And that's the Dr. Nickels we've been speaking  
 4 about?  
 5 A I believe so.  
 6 Q And it's dated April 30th, 2012?  
 7 A Yes.  
 8 Q And the email's from Manoj Kumar?  
 9 A Yes.  
 10 Q And he writes, "Hi Phil. The expense till  
 11 date has been approximately \$4,000. The break  
 12 up is \$2,760" -- sorry, "The break up is  
 13 \$2,726 for COLA, \$276 for API, \$750 for CLC  
 14 first installment and \$120 for advertisement."  
 15 Do you see that?  
 16 A Yes.  
 17 Q What is COLA?  
 18 A Laboratory regulation agency.  
 19 Q That would be for a licensure?  
 20 A I don't know.  
 21 Q What's API?  
 22 A I don't know.  
 23 Q What is CLC?  
 24 A I don't know.  
 25 Q Mr. Kumar writes, "The next envisaged

1 for \$9,000; right?  
 2 (GOVERNMENT'S EXHIBIT NO. 29 MARKED)  
 3 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 4 Q I'm showing you what's been marked as  
 5 Government's Exhibit 29. Do you recognize  
 6 this document?  
 7 A Yes.  
 8 Q What is it?  
 9 A Wells Fargo statement.  
 10 Q And this is from one of your bank accounts;  
 11 correct?  
 12 A It appears to be.  
 13 Q For the May, 2012 time period?  
 14 A Yes.  
 15 Q If you'll look at the second page. The second  
 16 entry down dated 5/2 is a \$10,000 transfer to  
 17 Manoj Kumar; right?  
 18 A Yes.  
 19 Q So on 5/2 you transferred Mr. Kumar \$10,000;  
 20 right?  
 21 A It appears to be.  
 22 Q And that was several days after he asked you  
 23 for a check for \$9,000; correct?  
 24 A Yes.  
 25 (GOVERNMENT'S EXHIBIT NO. 30 MARKED)

1 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 2 Q I'm going to show you what's been marked as  
 3 Government's Exhibit 30. Do you remember what  
 4 the \$10,000 you transferred to Manoj Kumar on  
 5 5/2 was for?  
 6 BY MR. VILLMER:  
 7 I would say just let him read the email first  
 8 if you're going to ask him a question about  
 9 it.  
 10 BY MR. JOHNSON:  
 11 I'm not asking him a question about the email.  
 12 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 13 Q Mr. McHugh, do you remember what the \$10,000  
 14 that you transferred to Manoj Kumar on 5/2 was  
 15 for?  
 16 A I do not.  
 17 Q Have you seen the emails in Exhibit 30?  
 18 A Not from memory.  
 19 Q They're between yourself, Mr. Kumar and Marcus  
 20 Sowinski?  
 21 A Okay.  
 22 Q Is that right?  
 23 A Yes.  
 24 Q Your email address is pmmchugh@pclabservices;  
 25 right?

1 he would switch to us at that stage or soon  
 2 after. What do you opine, Phil?" Did I read  
 3 that correctly?  
 4 A Yes.  
 5 Q And then you reply, "Yes. Let's chat  
 6 tomorrow"; right?  
 7 A Yes.  
 8 Q Do you know what lab Mr. Kumar was referencing  
 9 when he said, "Dr. Nickels' lab is likely to  
 10 be up and running by mid-June"?  
 11 A I do not.  
 12 Q When Mr. Kumar writes, "It is expected that he  
 13 would switch to us at that stage or soon  
 14 after," did you understand that to mean he  
 15 would switch to referring samples to PCLS?  
 16 A I don't know.  
 17 (GOVERNMENT'S EXHIBIT NO. 31 MARKED)  
 18 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 19 Q Mr. McHugh, I'm going to show you what's been  
 20 marked as Government's Exhibit 31. Let me  
 21 know when you've had a chance to review this  
 22 exhibit, Mr. McHugh.  
 23 A Okay.  
 24 Q I'd like to turn your attention to the second  
 25 to the last page of this email stream which is

1 A Correct.  
 2 Q And Manoj Kumar's email address is  
 3 Mkumar@pclabservices; right?  
 4 A Correct.  
 5 Q And Marcus Sowinski's PCLS email address was  
 6 msowinski@pclabservices; right?  
 7 A Correct.  
 8 Q In the original April 8, 2012 email Mr. Kumar  
 9 writes to Mr. Sowinski, "Marcus. As you are  
 10 aware, Phil is attempting to get back Dr. John  
 11 Nickels from Cleveland. It is expected that  
 12 he will be back with us by July, slash,  
 13 August." Did I read that correctly?  
 14 A Yes.  
 15 Q How were you attempting to get back John  
 16 Nickels from Cleveland?  
 17 A I don't know.  
 18 Q And then on May 9th, 2012 Sowinski writes to  
 19 yourself and Mr. Kumar, "is Dr. Nickels still  
 20 a," quote/unquote, "priority?" Did I read  
 21 that correctly?  
 22 A Yes.  
 23 Q And then that same day in response Mr. Kumar  
 24 writes, "Marcus. His lab is likely to be up  
 25 and running by mid-June. It is expected that

1 Bates labeled 22509.  
 2 A Okay.  
 3 Q Are you there with me?  
 4 A I am.  
 5 Q And then middle email is from  
 6 JNick98909@aol.com to Manoj Kumar at PCLS. Do  
 7 you see that?  
 8 A Uh-huh. (Affirmative)  
 9 Q I'll represent to you that Dr. Nickels has  
 10 testified in this case that is his email  
 11 address. He writes, "Manoj, Happy  
 12 Thanksgiving." He encloses some figures. And  
 13 then the last three sentences he writes, "I  
 14 have also \$8,410.75 in expenses that I need to  
 15 be reimbursed for per my agreement with Phil.  
 16 Let me know what day is good for you. I'm  
 17 good Monday through Thursday." Do you see  
 18 that?  
 19 A I do.  
 20 Q Did I read that correctly?  
 21 A It appears, yes.  
 22 Q Do you know what agreement with Phil that Mr.  
 23 -- or that Dr. Nickels is referencing?  
 24 A No.  
 25 Q Do you understand the Phil referenced there to

1 be yourself?  
 2 BY MR. VILLMER:  
 3 Objection to the form of the question. You  
 4 can answer.  
 5 BY THE DEPONENT:  
 6 I don't know.  
 7 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 8 Q Ultimately, if you'll turn to the first page  
 9 of this email chain, Mr. Kumar forwards it to  
 10 yourself. Do you see that?  
 11 A I do.  
 12 Q And on November 25th, 2012 Mr. Kumar writes,  
 13 "The ticket is a bit expensive, but  
 14 considering the potential gain in the number  
 15 of samples, I will be going to meet with him  
 16 on Thursday for dinner." Did I read that  
 17 correctly?  
 18 A Yes.  
 19 Q And you replied, "Agree."  
 20 A Yes.  
 21 Q What were you agreeing about?  
 22 A I don't know.  
 23 (GOVERNMENT'S EXHIBIT NO. 32 MARKED)  
 24 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 25 Q I'm going to show you what's been marked as

1 Government's Exhibit 32. Have you ever seen  
 2 this document before?  
 3 A Yes.  
 4 Q What is it?  
 5 A It's an email.  
 6 Q From Dr. Nickels to Manoj Kumar; correct?  
 7 A Yes.  
 8 Q And it attaches a bill; correct?  
 9 A Yes.  
 10 Q And that attachment is entitled Expenses for  
 11 Manoj; right? If you look at the attachment  
 12 title under the email.  
 13 A Yes.  
 14 Q And in the attachment it lists 37 separate  
 15 expenses; right?  
 16 A Yes.  
 17 Q And the total due at the bottom is \$16,413.03?  
 18 A Yes.  
 19 Q And Dr. Nickels writes to Mr. Kumar, "Happy  
 20 New Year. I've enclosed the updated bill so  
 21 you can bring funds with you next week. I'm  
 22 looking forward to seeing you and Phil. Do  
 23 you know what day you are coming on yet? Take  
 24 care, John." Did I read that correctly?  
 25 A Yes.

1 Q Do you understand the Phil referenced in this  
 2 email to be yourself?  
 3 A I don't know.  
 4 Q How have you seen this email before?  
 5 A Through ---  
 6 BY MR. VILLMER:  
 7 I'm going to just -- I'm going to instruct the  
 8 witness, to the extent you're going to reveal  
 9 confidential correspondence or communications  
 10 between yourself and any attorney or staff  
 11 member of our office, please do not answer  
 12 that question. To the extent you can answer  
 13 that question outside of that, then please  
 14 answer his question.  
 15 BY THE DEPONENT:  
 16 Just from this case.  
 17 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 18 Q So it's a document you've reviewed in this  
 19 litigation?  
 20 A Yes.  
 21 Q Do you know a Dr. John Johnson?  
 22 A I do.  
 23 Q How do you know him?  
 24 A From the laboratory.  
 25 Q Was he a doctor that referred samples to PCLS?

1 A Yes.  
 2 Q Do you know the time period of which Dr.  
 3 Johnson referred samples to PCLS?  
 4 A I do not.  
 5 Q When did you first meet Dr. Johnson?  
 6 A I don't remember.  
 7 Q Have you ever met with him in person?  
 8 A Yes.  
 9 Q When was that?  
 10 A I don't remember.  
 11 Q Where was that?  
 12 A I believe at his office.  
 13 Q And that was in Pennsylvania?  
 14 A I don't remember.  
 15 Q Did you ever have any involvement with helping  
 16 Dr. Johnson set up an analyzer lab in his  
 17 practice?  
 18 BY MR. VILLMER:  
 19 Objection to the form of the question. You  
 20 can answer.  
 21 BY THE DEPONENT:  
 22 Outside of giving information, no.  
 23 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 24 Q What information did you give to Dr. Johnson  
 25 regarding an analyzer lab?

1 A General information that he had inquired  
2 about.  
3 Q Did you assist Dr. Johnson in any other way  
4 with setting up his analyzer lab other than  
5 giving him general information?  
6 BY MR. VILLMER:  
7 Objection to the form of the question. You  
8 can answer.  
9 BY THE DEPONENT:  
10 I don't believe so.  
11 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
12 Q Did you ever direct Manoj Kumar to make a  
13 \$17,000 down payment on an analyzer for Dr.  
14 Johnson?  
15 A No.  
16 Q Are you aware that Manoj Kumar did so?  
17 A From this case, yes.  
18 Q Outside of this case you have no knowledge of  
19 Manoj Kumar making a \$17,000 down payment on  
20 an analyzer for Dr. Johnson?  
21 BY MR. VILLMER:  
22 Objection to the form of the question, but you  
23 can answer.  
24 BY THE DEPONENT:  
25 Correct.

1 Q And the attachment is a document that has Dr.  
2 Johnson's Lab at the top, and then it has 14  
3 bullet points underneath it?  
4 A Correct.  
5 Q And those are all tasks that come with setting  
6 up a lab; right?  
7 A Yes.  
8 Q Would you take a look at Exhibit 34.  
9 A Okay.  
10 Q If you could turn to the second page which is  
11 Bates labeled 27679 at the bottom. There's an  
12 original message from Steve Glenn to John  
13 Johnson with the subject Lab Info. Do you see  
14 that?  
15 A Yes.  
16 Q Who is Steve Glenn?  
17 A I don't know.  
18 Q And that email is forwarded from John Johnson  
19 on Monday, May 14th to yourself, Mr. Glenn and  
20 Manoj Kumar; correct?  
21 A Yes.  
22 Q And he writes, "Phil and Manoj, we are now a  
23 go for this. Will get this signed and faxed  
24 in ASAP today. Ready to rock and roll. Sorry  
25 for the delay. Will put the lab in the

1 (GOVERNMENT'S EXHIBIT NOS. 33 AND 34 MARKED)  
2 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
3 Q I'm going to show you what's been marked as  
4 Government's Exhibit 33 and Government's  
5 Exhibit 34. Would you take a look at Exhibit  
6 33 for me, Mr. McHugh.  
7 A Okay.  
8 Q Have you seen this document before?  
9 A Yes.  
10 Q What is -- what's in Exhibit 33?  
11 BY MR. VILLMER:  
12 Objection to the form of the question, but you  
13 can answer.  
14 BY THE DEPONENT:  
15 It appears to me it's the generic list of what  
16 it takes to put a laboratory together.  
17 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
18 Q So Exhibit 33 is an email from yourself to  
19 Manoj Kumar in April of 2012; right?  
20 A Yes.  
21 Q And the subject is Dr. Johnson Checklist?  
22 A Yes.  
23 Q And the attachment is entitled Dr. Johnson's  
24 Lab List?  
25 A Yes.

1 proposed location for now. Will need to move  
2 the lab by the end of the year. Thanks, JJ."  
3 Did I read that correctly?  
4 A Yes.  
5 Q Do you know what lab that Dr. Johnson was  
6 referencing in this email?  
7 A I don't.  
8 Q Do you know what he was getting signed and  
9 faxed in?  
10 A I don't.  
11 Q If you would turn to the first page of the  
12 email. You respond to Dr. Johnson; correct?  
13 A Yes.  
14 Q On Monday, May 14th, 2012?  
15 A Yes.  
16 Q And you write, "Dr. Johnson, great letter.  
17 Manoj and I will take care of the rolling.  
18 You handle to rockin," smiley face?  
19 A Yes.  
20 Q "Will also tell Dr." -- is that Colon or Colon  
21 (different pronunciation), do you know?  
22 A Colon.  
23 Q Colon. "Will also tell Dr. Colon to start  
24 working on a time table, with your business  
25 associate, and getting up to your clinics and

1 switching over from Millennium. Call with  
 2 anything. Thank you, Phil McHugh." Did I  
 3 read that correctly?  
 4 A Yes.  
 5 Q And your signature block in this email  
 6 indicates you were the president of PCLS at  
 7 the time; correct?  
 8 A Yes.  
 9 Q Do you know what Millennium you were  
 10 referencing in this email was?  
 11 A I assume a laboratory.  
 12 Q And that was a competitor laboratory to PCLS;  
 13 correct?  
 14 A Yes.  
 15 (GOVERNMENT'S EXHIBIT NO. 35 MARKED)  
 16 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 17 Q I'm going to show you what's been marked as  
 18 Government's Exhibit 35. Have you seen the  
 19 document in Exhibit 35 before?  
 20 A I do not recall it.  
 21 Q If you could -- it's an email from Meg Wood to  
 22 Dr. Johnson cc'ing yourself; correct?  
 23 A Yes.  
 24 Q And attached to the email is a Verified  
 25 Statement on Physicians Choice, you know,

1 Government's Exhibit 36. Do you recognize the  
 2 document that's in Exhibit 36?  
 3 A I do not recall it.  
 4 Q It's an email chain that was ultimately -- I  
 5 guess ultimately you were added to the email  
 6 chain as a carbon copy; correct?  
 7 A Yes.  
 8 Q And this is in May, 2012?  
 9 A Yes.  
 10 Q In the underlying email Dr. John Johnson is  
 11 emailing Mr. Kumar and Mr. Glenn asking, "What  
 12 is my next step in setting up the lab?" Do  
 13 you see that?  
 14 A Yes.  
 15 Q And Mr. Kumar writes back, cc'ing you,  
 16 stating, "Dear JJ. We have started the  
 17 process of obtaining the CLIA licensure. The  
 18 following information is required for  
 19 completing the application." Do you see that?  
 20 A Yes.  
 21 Q What is a CLIA licensure?  
 22 BY MR. VILLMER:  
 23 Objection, asked and answered, but you can  
 24 answer.  
 25 BY THE DEPONENT:

1 letterhead that discusses the fact that Dr.  
 2 Johnson is interested in submitting urine  
 3 samples to PCLS. He's currently a lab  
 4 director with UOFL, and disclaims any  
 5 ownership interest in UOFL; correct?  
 6 A It seems -- seems to be.  
 7 Q Do you know why this verified statement was  
 8 sent to Dr. Johnson?  
 9 A I do not.  
 10 Q Do you know why PCLS would have wanted Dr.  
 11 Johnson to declare that he did not have any  
 12 ownership interest in UOFL?  
 13 A I do not.  
 14 Q And if you'll look to the very last page it  
 15 has space for signatures. The first being  
 16 John H. Johnson, M.D.; right?  
 17 A Yes.  
 18 Q And then for PCLS it has yourself ---  
 19 A Yes.  
 20 Q --- as president of Strategic Business  
 21 Development?  
 22 A Yes.  
 23 (GOVERNMENT'S EXHIBIT NO. 36 MARKED)  
 24 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 25 Q I'm going to show you what's been marked as

1 Licensure as being licensed with CLIA.  
 2 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 3 Q And that's a regulatory authority for the  
 4 labs?  
 5 A Yes.  
 6 Q Was PCLS handling the process of obtaining the  
 7 CLIA licensure for Dr. Johnson's lab?  
 8 BY MR. VILLMER:  
 9 Objection to the form of the question, but you  
 10 can answer.  
 11 BY THE DEPONENT:  
 12 Not that I know of.  
 13 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 14 Q Do you know what Mr. Kumar was referencing  
 15 when he said, "Dear JJ. We have started the  
 16 process of obtaining the CLIA licensure"?  
 17 A No.  
 18 Q But you would agree with me that you were  
 19 copied on this email; correct?  
 20 A Yes.  
 21 BY MR. JOHNSON:  
 22 Let's take five.  
 23 BY MR. VILLMER:  
 24 Sounds good.  
 25 (OFF THE RECORD)

1 A Yes.

2 Q Did you express your displeasure regarding the

3 case to Ms. Hartnett?

4 A I did.

5 Q Did you discuss anything else with her?

6 A That was the basic of the conversation.

7 Q Did you ask her to testify on your behalf in

8 this case?

9 A I don't remember.

10 Q You're aware that Mr. Kumar has settled in

11 this case with the United States; correct?

12 A Yes.

13 Q Did you contribute any money to the settlement

14 amount that he paid?

15 A No.

16 Q Have you ever paid any money towards Manoj

17 Kumar's legal fees in this case?

18 A No.

19 BY MR. JOHNSON:

20 I'll pass the witness.

21 BY MR. VILLMER:

22 Let's take five and then we'll come back.

23 Thank you.

24 (OFF THE RECORD)

25 CROSS-EXAMINATION BY MR. VILLMER:

1 Q Mr. McHugh, I just have a few quick questions

2 for you. Do you recall earlier when Mr.

3 Johnson was asking you questions about an

4 analyzer and Dr. John Johnson?

5 A Yes.

6 Q Do you remember that you mentioned that you

7 might provide general information to a doctor

8 about lab setup requirements?

9 A Yes.

10 Q As an example of you providing such general

11 information, did you reach out to Diamond

12 Diagnostics to obtain a price quote on an

13 analyzer to ultimately provide to Dr. Johnson?

14 A Yes.

15 BY MR. VILLMER:

16 No further questions. Thank you.

17 REDIRECT EXAMINATION BY MR. JOHNSON:

18 Q One followup question. With respect to Dr.

19 Johnson, you did reach out to Diamond

20 Diagnostics regarding his analyzer?

21 A Yes.

22 BY MR. VILLMER:

23 Objection to the form of the question, but you

24 can answer.

25 BY MR. JOHNSON:

1 Nothing further.

2 (PROCEEDINGS CONCLUDED AT APPROXIMATELY 3:49 P.M.)

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CERTIFICATE

I, Barbie M. Lane, CVR-M, CCR, Court Reporter

and Notary Public, do hereby certify that the

foregoing is an accurate transcript of the

deposition of Philip McHugh, taken by me and

transcribed under my supervision.

I further certify that I am not financially

interested in the outcome of this action, a

relative, employee, attorney or counsel of any of

the parties, nor am I a relative or employee of

such attorney or counsel.

This is the 27th day of November, 2020.

\_\_\_\_\_  
BARBIE M. LANE, CVR-M, CCR

Notary Public No.: 19953050008

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<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA 2 CHARLOTTE DIVISION -----X 3 UNITED STATES OF AMERICA, et al., ex rel. TARYN HARTNETT and DANA 4 SCHOCHED, 5 Plaintiffs, 6 v, 7 PHYSICIANS CHOICE LABORATORY SERVICES, LLC, DOUGLAS SMITH, 8 PHILIP MCHUGH, and MANOJ KUMAR, 9 Defendants. -----X 10 CASE NO.: 3:17-cv-37-KDB-DCK 11 12 Deposition of JOSEPH MUNDEN 13 14 DATE TAKEN: November 10, 2020 15 16 TIME: 9:00 a.m. 17 18 PLACE: Remote Location via Zoom 19 20 REPORTED BY: Janine A. Sedacca 21 Professional Shorthand 22 Reporter and Notary Public 23 State of Florida 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 November 10, 2020 2 3 I N D E X 4 EXAMINATION BY PAGE 5 Mr. Villmer 8 6 Ms. Armstrong 41 7 8 9 E X H I B I T S 10 MARKED FOR IDENTIFICATION 11 NO. PAGE 12 1: E-mail chain, "FW: Collectors 61 13 and Hardware for PCLS Clients 14 15 2: E-mail chain, "RE: CPPM 61 16 Pennsylvania" 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S 2 U.S. ATTORNEY'S OFFICE Attorneys for Plaintiff United States of 3 America 227 West Trade Street, Suite 1650 4 Carillon Building Charlotte, North Carolina 28202 5 6 BY: KATHERINE T. ARMSTRONG, ESQ. KATHLENE HOLLOWELL, ESQ. P: (704) 344-6222 7 E: Katherine.Armstrong@usdoj.gov 8 9 10 WEAVER, BENNETT, &amp; BLAND, P.A. Attorneys for Defendant Philip McHugh 11 196 North Trade Street Matthews, North Carolina 28105 12 BY: MATTHEW M. VILLMER, ESQ. P: (704) 850-5498 13 F: (704) 845-1503 14 15 ALSO PRESENT: 16 JENNIFER KRAHN, Videographer 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 S T I P U L A T I O N S 3 IT IS HEREBY STIPULATED AND AGREED 4 by and between the attorneys for the 5 respective parties herein that filing 6 and sealing be and the same are hereby 7 waived. 8 IT IS FURTHER STIPULATED AND 9 AGREED that all objections, except as to 10 the form of the question, shall be 11 reserved to the time of the trial. 12 IT IS FURTHER STIPULATED AND 13 AGREED that the within deposition may be 14 signed and sworn to before any officer 15 authorized to administer an oath with 16 the same force and effect as if signed 17 and sworn to before the Court. 18 19 20 21 22 23 24 25</p>



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Page 37

1 THE VIDEOGRAPHER: We're going back  
2 on the record at 9:39 a.m.  
3 BY MR. VILLMER:  
4 Q. Okay. Mr. Munden, after a quick  
5 technical glitch with Zoom, I've shared my  
6 screen again.  
7 So can you see this e-mail? And  
8 again, that's apparently from Elan Colon to you  
9 dated December 31st, 2012. The subject is CPPM  
10 Pennsylvania.  
11 First of all, who is Elan Colon?  
12 A. He was somebody that I believe was  
13 on the 1099 side of the company.  
14 Q. You mean the 1099 sales team?  
15 A. Yes.  
16 Q. And there were some 1099  
17 salespeople and some W-2 salespeople; is that  
18 fair?  
19 A. Yeah. And my core responsibility  
20 was the W-2, and then we have this bridge over  
21 of -- and that's probably the way PCLS started.  
22 Q. Okay. So it looks like here that  
23 Mr. Colon is asking you for authorization for  
24 equipment to be installed in Dr. Johnson's  
25 office in Pennsylvania.

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1 Do you remember a Dr. Johnson?  
2 A. I do not.  
3 Q. Does Johnson ring a bell at all?  
4 A. I -- I don't --  
5 Q. Okay.  
6 A. I never met these doctors.  
7 Q. Okay. And it says, "At a minimum,  
8 we would need to have collector work stations  
9 installed at the busiest facilities in main  
10 location."  
11 What's a collector work station?  
12 A. That would be a -- the computer and  
13 the printer.  
14 Q. Okay. Not -- not potentially a  
15 desktop analyzer?  
16 A. I -- no, not at all.  
17 Q. Okay. So it looks like further up,  
18 you bring in Marcus Sowinski, and you say,  
19 "Marcus, do you want hardware in Pennsylvania?  
20 This is a followup to our quick call in the  
21 a.m."  
22 Why were you bringing in Marcus  
23 Sowinski into this kind of exchange?  
24 A. I believe that prior to the person  
25 that assisted Meg, I believe that's Dinah; is

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1 that right?  
2 Q. Yeah. Dinah Myers.  
3 A. Marcus ran the -- that department  
4 reported to him, the compliance department.  
5 Q. Okay. And -- and if -- if anyone  
6 would send you an e-mail like this on the sales  
7 team asking about collectors or replacement of  
8 hardware, was that kind of your standard  
9 practice, you loop in Marcus Sowinski so he can  
10 be in the loop and give you some advice or  
11 guidance on some of this stuff?  
12 A. Marcus or Meg depending on -- I  
13 don't think that -- I don't remember the dates  
14 of me being there, but I think that I had only  
15 been there for a couple of months and I  
16 probably was working -- communicating with  
17 Marcus being in transition over to Meg.  
18 Q. Got it. And then it looks like you  
19 jump back on January 2nd after a couple days  
20 asking if there are any updates?  
21 A. Yeah.  
22 Q. Looks like Marcus responds and  
23 said, "I didn't know it was in PA. Did Dinah  
24 give you any updates? I will need to talk to  
25 her."

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1 Dinah as in Dinah Myers?  
2 A. I think that's safe to assume.  
3 Q. Okay. And this is a long shot, but  
4 down here it says, "Marcus can you loan  
5 hardware in Pennsylvania? This is a followup  
6 to our quick call this a.m."  
7 Do you remember having a phone call  
8 with Joe -- for Marcus Sowinski towards the end  
9 of 2012 about this particular issue?  
10 A. I really don't.  
11 Q. Do you remember --  
12 A. And reading that, it would be that,  
13 you know, somebody has a need and can you  
14 expedite this if there was a phone call or  
15 something.  
16 Q. Sure. Do you remember what  
17 ultimately occurred, whether there was any  
18 hardware placed with Dr. Johnson?  
19 A. I don't recall if there was or  
20 there was not, but I know that the compliance  
21 department was tracking every place they put a  
22 computer and a printer as well as a collector,  
23 so that information should be available.  
24 Q. All right. I don't think I have  
25 any more questions for you at this time. I may

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1 A. That's correct, yes.  
2 Q. Thank you.  
3 Prior to your phone call from Mr.  
4 McHugh two months ago, when is the last time  
5 you talked to Mr. Munden?  
6 A. Maybe six months or something. I  
7 don't know. Eight months.  
8 Q. And what did y'all talk about when  
9 you talked six or eight months prior to your  
10 last conversation?  
11 A. Probably more of how's it going,  
12 whatever. And if we did talk about something  
13 like this, it was about the same amount of  
14 tension given to it.  
15 I talk to my father about all this  
16 stuff. I'm pretty private. That's why we're  
17 on a deposition and I'm not freely talking  
18 about anybody.  
19 Q. Understood.  
20 Did you maintain any relationship,  
21 whether it be personal or business  
22 relationship, with Mr. McHugh after you left  
23 PCLS?  
24 A. No.  
25 Q. Do you owe him any money?

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1 A. No.  
2 Q. Have you ever owed him any money?  
3 A. No.  
4 Q. When's the last time you talked to  
5 Doug Smith?  
6 A. Oh, Lord. It was while I was at  
7 PCLS.  
8 Q. Did you have any interactions with  
9 Mr. Smith while you were at PCLS?  
10 A. I -- I can count the times I saw  
11 him on more than one -- on one hand. So few  
12 and far between.  
13 Q. What was your understanding of his  
14 role of the company while you were there?  
15 A. I think that he moved into more of  
16 a silent investor role when I got there. I  
17 didn't see him much at the organization at all.  
18 MS. ARMSTRONG: If we can go off  
19 the record for two minutes, I'm just going to  
20 check my notes to make sure I've covered  
21 everything and then I'm probably done. Is that  
22 okay with you guys? Give me two minutes,  
23 please.  
24 MR. VILLMER: All right. Hey,  
25 Kat --

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1 MS. ARMSTRONG: Yeah.  
2 MR. VILLMER: -- if we can just get  
3 a two-minute break overall, I can probably get  
4 my ducks in a row on whether I have any  
5 additional questions.  
6 MS. ARMSTRONG: Yeah. That sounds  
7 great. We'll be back in a minute.  
8 THE VIDEOGRAPHER: We're going off  
9 the record at 10:07 a.m.  
10 (Recess taken.)  
11 THE VIDEOGRAPHER: We are back on  
12 the record at 10:09 a.m.  
13 MS. ARMSTRONG: Joe, thank you. I  
14 have no more questions for you.  
15 MR. VILLMER: Thanks for your time,  
16 Mr. Munden. I have no further questions  
17 either.  
18 THE WITNESS: Okay. Thank you.  
19 MS. ARMSTRONG: Thank you guys.  
20 THE VIDEOGRAPHER: We do ask that  
21 all participants stay connected briefly to  
22 provide your transcript and video orders, other  
23 than you, Mr. Munden, are free to go.  
24 THE WITNESS: Okay. Thank you.  
25 Bye-bye.

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1 THE VIDEOGRAPHER: You're welcome.  
2 Would anyone like a copy of the  
3 video?  
4 MS. ARMSTRONG: Not at this time,  
5 but we may later down the road.  
6 THE VIDEOGRAPHER: Okay.  
7 MR. VILLMER: Yeah. We don't need  
8 a copy of the video right now. We may down the  
9 road.  
10 We do want a transcript, PDF, with  
11 the exhibits.  
12 And Janine, if you don't mind, can  
13 you shoot me an e-mail so I can respond back  
14 with these exhibits, and I'll include Kat on  
15 that e-mail as well.  
16 MS. ARMSTRONG: Can we just get an  
17 E-tran with exhibits, please?  
18 THE VIDEOGRAPHER: And Kathlene,  
19 would you like a copy of the video, or is she  
20 with you guys?  
21 MS. ARMSTRONG: She's with me.  
22 Yeah. Thank you.  
23 THE VIDEOGRAPHER: All right.  
24 Awesome.  
25 This concludes the videoconference

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1 deposition of Mr. Munden. We are going off the  
2 record on November 10th, 2020, at 10:11 a.m.  
3 (Exhibit No. 1, e-mail chain, "FW:  
4 Collectors and Hardware for PCLS Clients,"  
5 marked for identification as of this date.)  
6 Exhibit No. 2, e-mail chain, "RE:  
7 CPPM Pennsylvania," marked for identification  
8 as of this date.)  
9 (Time Noted: 10:10 a.m.)  
10  
11  
12  
13  
14 JOSEPH MUNDEN  
15  
16 Subscribed and sworn to before me  
17 this \_\_\_\_ day of \_\_\_\_, 2020.  
18  
19  
20  
21  
22  
23  
24  
25

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1 C E R T I F I C A T E  
2 STATE OF FLORIDA )  
3 COUNTY OF ORANGE )  
4  
5 I, JANINE A. SEDACCA, a Notary Public  
6 within and for the State of Florida, do  
7 hereby certify:  
8 That JOSEPH MUNDEN, the witness  
9 whose deposition is hereinbefore set  
10 forth, was sworn and that such  
11 deposition is a true record of the  
12 testimony given by such witness.  
13 I further certify that I am not  
14 related to any of the parties to this  
15 action by blood or marriage and that I  
16 am in no way interested in the outcome  
17 of this matter.  
18 IN WITNESS WHEREOF, I have hereunto  
19 set my hand this 10th day of November, 2020.  
20  
21  
22  
23 JANINE A. SEDACCA  
24 Notary Public, State of Florida  
25 Commission No.: GG284654  
Commission Expires: 12/16/2022

Page 63

1 DEPOSITION ERRATA SHEET  
2  
3 Esquire Deposition Assignment No.: J6126045  
4 Case Caption: UNITED STATES OF AMERICA, et  
5 al., ex rel. TARYN HARTNETT and DANA SCHOCHED  
6 v. PHYSICIANS CHOICE LABORATORY SERVICES, LLC,  
7 DOUGLAS SMITH, PHILIP MCHUGH, and MANOJ KUMAR  
8  
9 DECLARATION UNDER PENALTY OF PERJURY  
10  
11 I declare under penalty of perjury that  
12  
13 I have read the entire transcript of my  
14 deposition taken in the captioned matter or  
15 the same has been read to me, and the same is  
16 true and accurate, save and except for changes  
17 and/or corrections, if any, as indicated by me  
18 on the DEPOSITION ERRATA SHEET hereof, with  
19 the understanding that I offer these changes  
20 as if still under oath.  
21 Signed on the \_\_\_\_ day of  
22 \_\_\_\_\_, 20\_\_\_\_  
23  
24 JOSEPH MUNDEN  
25

Page 64

1 DEPOSITION ERRATA SHEET  
2 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_  
3  
4 Reason for change: \_\_\_\_  
5 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_  
6  
7 Reason for change: \_\_\_\_  
8 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_  
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10 Reason for change: \_\_\_\_  
11 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_  
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13 Reason for change: \_\_\_\_  
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16 Reason for change: \_\_\_\_  
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18  
19 Reason for change: \_\_\_\_  
20 Page No. \_\_\_\_ Line No. \_\_\_\_ Change to: \_\_\_\_  
21  
22 Reason for change: \_\_\_\_  
23 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
24 JOSEPH MUNDEN  
25



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

UNITED STATES OF AMERICA ex rel.

TARYN HARNETT, and DANA SHOCHED,

Plaintiffs,

Case No.

vs.

3:17-CV-37

PHYSICIANS CHOICE LABORATORY SERVICES,

DOUGLAS SMITH, PHILIP MCHUGH

and MANOJ KUMAR,

Defendants.

- - - - -

VIDEOTAPED DEPOSITION OF JOHN H. NICKELS, M.D.

Taken on Friday, September 11, 2020 at 9:42 o'clock a.m.

At The Offices Of:

U.S. Attorney's Office

801 West Superior Avenue

Suite 400

Cleveland, Ohio 44113

Before Kelly A. Dell'Anno, a Court Reporter and

Notary Public in and for the State of Ohio

Page 10

1 And so '85 to '19, enough years.  
2 **Q.** How many of those years did  
3 you have a pain management practice,  
4 roughly?

5 **A.** At least 20 years. And at  
6 the end of my career the last two years  
7 I was really doing exclusively a  
8 Suboxone clinic. And Suboxone is the  
9 drug that we would give to opioid  
10 addicts that would take away their  
11 craves. So initially we started with 30  
12 patients, we built that and we were  
13 allowed then to see a hundred patients.

14 So I had a hundred patients and  
15 that was just so rewarding to take  
16 somebody that had basically lost their  
17 life to drugs and give them hope. And  
18 give them some ... something that they  
19 could use to fight those craves.

20 **Q.** Before the last two years in  
21 the Suboxone clinic, what was your pain  
22 management practice called?

23 **A.** Cleveland Back and Pain  
24 Management Center.

25 **Q.** Do you remember when you

Page 12

1 great.

2 **Q.** In the, you know, 2010 to  
3 let's say 2014 time period, what types  
4 of patients did Cleveland Back and Pain  
5 Management see?

6 **A.** We would see any patients.  
7 We would see Medicaid and Medicare  
8 patients, we would see every insurance  
9 that you could think of. We had some  
10 self-pay patients that would come see  
11 us. But the majority were either --  
12 well, Grace Hospital is actually in the  
13 inner city here, so we had a heavy  
14 Medicaid population. But we would see  
15 anybody that -- well, anybody that had  
16 insurance or wanted to pay for an office  
17 visit we would see them.

18 **Q.** And just generally why would  
19 a patient come to a pain management  
20 clinic?

21 **A.** Obviously because of pain.

22 **Q.** So in a pain management  
23 clinic are you prescribing drugs to help  
24 with the pain?

25 **A.** Yes, sir. Our approach was

Page 11

1 opened up Cleveland Back and Pain  
2 Management Center?

3 **A.** Oh, boy, let's see, '85,  
4 three years, '88, '89, probably around  
5 '92 or '93. Somewhere in there.

6 **Q.** And when did you stop  
7 practicing with Cleveland Back and Pain  
8 Management?

9 **A.** It was a year and a half  
10 ago, past June so ...

11 **Q.** So the Suboxone clinic was  
12 also at the Cleveland Back and Pain  
13 Management?

14 **A.** Well, no, I was still the --  
15 I was still the director of Cleveland  
16 Back and Pain Management Center and then  
17 I sold my practice to a Dr. Kozmary.

18 And Dr. Kozmary, again, kept me on to  
19 continue to see the Suboxone patients.  
20 And then we had midlevel practitioners,  
21 nurse practitioners, physician  
22 assistants, and I was still there to  
23 help guide them through the, you know,  
24 anything pain management wise that they  
25 couldn't handle. So -- and they were

Page 13

1 really first in evaluation, to find out  
2 why you had your pain. You know, and  
3 it could be your neck, your back, your  
4 lower back, your arms, your legs,  
5 anywhere there. So we do all the  
6 diagnostics to diagnose why you're  
7 having your pain. And then we would  
8 use two different treatments, one was  
9 medications and the other was physical  
10 therapy. So those are the two -- the  
11 three modalities that we would use.

12 **Q.** Before you sold your interest  
13 in the practice, did anyone else have an  
14 ownership interest in Cleveland Back and  
15 Pain Management?

16 **A.** Never.

17 **Q.** So from 2010 to 2014 you  
18 were the sole owner, so to speak?

19 **A.** Yes, sir.

20 **Q.** You mentioned the prescribing  
21 of medications, what type of medications  
22 would you all prescribe generally?

23 **A.** We would typically prescribe  
24 an anti-inflammatory, a muscle relaxer,  
25 and a pain med.



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1 Q. Can you give me examples of  
2 the types of pain meds?  
3 A. Certainly. My practice I  
4 decided I wasn't going to go to any of  
5 the stronger narcotics, so the strongest  
6 we used was Hydrocodone and Vicodin. So  
7 we didn't go up to the OxyContin or  
8 Oxycodones or Fentanyl or anything like  
9 that. We either treated you with  
10 Vicodin, if you needed something  
11 stronger, we would send your records  
12 wherever you could find that type of  
13 help.

14 Q. Is drug testing part of a  
15 pain management practice?

16 A. Huge, huge part of it.

17 Q. Why is that?

18 A. Well, there's two things that  
19 really revolutionized pain management,  
20 one was the development of an OARRS  
21 program. And OARRS is the Ohio  
22 something reporting, but heretofore we  
23 would never know if you had seen three  
24 different doctors in one day and ended  
25 up with three prescriptions. There was

Page 15

1 no way to track that. So when they  
2 developed this OARRS system now we could  
3 get a report of, you know, where you  
4 got your controlled substances from, so  
5 that helped.

6 And then urine drug screens came  
7 and that kind of really was the key to,  
8 you know, weeding out the bad people,  
9 let's say versus somebody or, you know,  
10 why their level of narcotic is not where  
11 it should be. You know, are you  
12 skipping doses or what's going on or why  
13 is it higher, you know, everything we  
14 could find, are you using illicit drugs,  
15 are you, you know, taking your  
16 medications we gave you?

17 Q. So with urine drug screens  
18 you're testing to see if, you know, kind  
19 of, A, people are taking what they  
20 should be taking. And, B, people aren't  
21 taking things they shouldn't, like  
22 cocaine or Fentanyl, things like that?

23 A. That's correct.

24 Q. Do you know what a desktop  
25 analyzer is?

Page 16

1 A. I believe so.

2 Q. Can you tell me what that  
3 is?

4 A. Yeah, there's different types  
5 of testing that could be done, there's  
6 clia-waived urine cups that are just  
7 dipsticks that are in urine and they  
8 give you a positive or a negative,  
9 there's no levels given on that.  
10 Typically a desktop unit would basically  
11 sit on a cart or wherever you have it,  
12 it's a smaller machine. But it gives a  
13 more accurate accounting for the initial  
14 evaluation of drugs. So from that we  
15 would get a number so we can know what  
16 the levels were.

17 And then that urine is then sent  
18 to a reference lab where they use liquid  
19 and gas chromatography, which is  
20 standard of care to evaluate and that's  
21 defensible in court, if it -- you know,  
22 if it shows cocaine you had cocaine in  
23 your system, so ...

24 Q. Have you heard the terms  
25 qualitative versus quantitative testing?

Page 17

1 A. Yes, I have.

2 Q. Is that kind of what you  
3 were talking about with the positive and  
4 negative and the more specific testing?

5 A. That's exactly what it is.  
6 Qualitative is again a positive/negative  
7 test. And it's -- desktop analyzers give  
8 that same qualitative, but more  
9 accurate. And then from there complex  
10 labs have the gas chromatography and  
11 that gives us the reference back that we  
12 can count on.

13 Q. Is -- when it's sent to the  
14 -- when a sample is sent to the complex  
15 lab, is that called confirmation  
16 testing?

17 A. Yes, sir.

18 Q. Did your practice have an  
19 analyzer in it?

20 A. We did.

21 Q. Do you know who Manoj Kumar  
22 is?

23 A. Oh, yeah. Yeah, absolutely.

24 Q. Do you know who Phil McHugh  
25 is?

Page 18

1 A. Phil I believe I only met  
2 once or twice. You could put him in a  
3 lineup and I doubt I could identify him  
4 for you.  
5 Q. You know Manoj better?  
6 A. Correct.  
7 Q. Did either Manoj Kumar or  
8 Phil McHugh have anything to do with  
9 your practice receiving a desktop  
10 analyzer?  
11 A. Well, no, they were the  
12 reference lab. We got our analyzer from  
13 a different company.  
14 Q. Who did you get your  
15 analyzer from?  
16 A. A company called Alternative  
17 Bio something, ABS Services. And Ray  
18 Fuller was the agent in charge of the  
19 analyzers.  
20 Q. Did Manoj Kumar or Phil  
21 McHugh ever pay for expenses related to  
22 your analyzer?  
23 A. I've reviewed the e-mails  
24 and, no, I don't think they ever ...  
25 ever paid me for that. So I'm still --

Page 19

1 I can't recollect from the last time I  
2 saw you guys as to what that list was  
3 and what the payments that were on that  
4 showed.  
5 Q. Let me ask you this, did you  
6 ever send lists of expenses to Manoj  
7 Kumar or Phil McHugh?  
8 A. I did.  
9 Q. Why did you do that?  
10 A. Again, I can't recall whether  
11 I was just itemizing what I was paying  
12 for certain things and, you know, I was  
13 paying ABS for reagents on a sliding  
14 scale was the way that worked. So if  
15 we did from 150 to 200 tests that was  
16 \$22. If we did 200 to 300 that was, I  
17 think \$17. So it was on a sliding  
18 scale that they used for what I needed  
19 to reimburse them for the machine, which  
20 was leased as long as we used their  
21 reagents.  
22 Q. So you leased the machine  
23 from ABS, correct?  
24 A. Correct.  
25 Q. Did you pay any upfront

Page 20

1 costs?  
2 A. None.  
3 Q. And then it sounds like you  
4 paid a cost per sample, that would be  
5 either \$22 or \$17 based on volume?  
6 MR. CAUDILL: Objection to the  
7 question, leading.  
8 A. Yes.  
9 MR. CAUDILL: I'm sorry, you can  
10 still answer.  
11 THE WITNESS: I'm sorry.  
12 A. It's --  
13 Q. Let me just ask you that  
14 question again.  
15 A. Okay.  
16 Q. How did you pay for the  
17 machine?  
18 MR. CAUDILL: I'm going to object  
19 to the questions because you've already  
20 given him the information. But you can  
21 go ahead and answer.  
22 A. Short term memory loss here,  
23 would you repeat the question?  
24 Q. Sure. The desktop analyzer  
25 in your practice, how was it paid for?

Page 21

1 A. It was paid on a per test  
2 rate. So, again, as I just said if we  
3 did up to 200 tests it was \$22. And it  
4 was various if we had over 500 or so it  
5 might have been 13 or \$12. So, you  
6 know, that was, again, based on testing.  
7 So the more tests that it was -- you  
8 know, everything was based on a set fee  
9 on a sliding scale.  
10 Q. You testified earlier that  
11 Manoj Kumar and Phil McHugh were  
12 associated with the confirmation testing  
13 company, right?  
14 A. You know, initially when I  
15 reviewed I seriously was under the  
16 impression that Ray Fuller worked for  
17 ABS. I thought he was an agent for  
18 ABS.  
19 Q. And I'm not asking about Ray  
20 Fuller, I'm asking about Manoj Kumar and  
21 Phil McHugh.  
22 Who did you think they worked  
23 for?  
24 A. Well, eventually I learned  
25 that -- and Phil McHugh I knew was with



Page 22

1 the lab, Physician Choice. Again, I  
2 thought that Manoj Kumar was part of  
3 ABS. And then I later, you know,  
4 discovered that he is an agent for  
5 Physician Choice Laboratories.

6 Q. I want to go back to, you  
7 know, when you first got the analyzer at  
8 that time, did you think that Manoj  
9 Kumar was a representative or agent for  
10 ABS?

11 A. I did not.

12 Q. When did you think that  
13 Manoj Kumar was a representative or  
14 agent for ABS?

15 A. Pretty early on when we got  
16 the machine and it took awhile to get  
17 it calibrated and get the CLIA  
18 certificate to use it, to hire a  
19 certified lab technician, to hire a  
20 collector to collect the urine. But at  
21 the beginning, you know, I really felt  
22 that Manoj Kumar was part of ABS.

23 Q. When did Manoj Kumar become  
24 involved with the analyzer in your  
25 office?

Page 24

1 A. Correct.

2 Q. Was Mr. Kumar involved at  
3 all with any of the CLIA licensure,  
4 getting the analyzer up to speed,  
5 anything like that?

6 A. No, that was all through the  
7 technicians that came to get the machine  
8 calibrated, get it set up, make sure it  
9 was running properly. So they were in  
10 charge of that.

11 Q. Once Mr. Kumar became  
12 involved with the analyzer, what was his  
13 role?

14 A. His role I thought, again,  
15 when I finally found out he was part of  
16 Physician Choice Labs was to push us to  
17 do more labs. In the beginning, you  
18 know, we probably do 800 urine drug  
19 screens a month. Obviously he wanted  
20 all 800 of them. We started off very  
21 slow to really verify that the machine  
22 was accurate. We would do -- we would  
23 look at the urine cup, see if that  
24 matched it, we would look at whatever we  
25 could to really verify that the machine

Page 23

1 A. I would say probably as soon  
2 as we started to be able to run samples  
3 through it. Because like I said, it's a  
4 process, you know, you can't just turn  
5 it on and run tests. It has ... it has  
6 to go through a certain verification  
7 process. I had to take a CLIA test,  
8 which is the lab company that certifies  
9 all the machines. So I had to get a  
10 CLIA license to operate the machine.

11 Again, we had to hire a lab tech  
12 or a lab technician, because every day  
13 you had to run a series of tests to  
14 confirm that is it analyzing the way it  
15 should be and then you move on. So I  
16 would think he appeared at the beginning  
17 because that's why I thought he was part  
18 of ABS.

19 Q. So when Manoj did first  
20 appear that's when you thought he was  
21 associated with ABS?

22 A. Correct.

23 Q. And that was the time period  
24 when you started to be able to run  
25 samples?

Page 25

1 was accurate.

2 And then also what the billings  
3 were, because the purpose of putting the  
4 analyzer in was to be able to bill for  
5 the use of it, you know, for profit.  
6 So he was always coming in and wanting  
7 to do more and more tests. You got to  
8 do more and more tests.

9 And, you know, he worked with my  
10 billing company, Physician Choice --  
11 Physician Services Bureau, Jay Chambers  
12 was the fellow that did my billing for  
13 about 15 years. And he worked with  
14 them to see what these collections would  
15 be and, you know, it started out pretty  
16 slow and that's why we'd only send like  
17 100 or 150 samples through them of all  
18 insurances to really get a read on what  
19 the reimbursements were going to be, and  
20 then what -- how accurate the machine  
21 was.

22 Q. How often would Mr. Kumar  
23 visit your practice?

24 A. I think at the beginning it  
25 was probably about once a month.

Page 26

1 Q. Did that change over time?  
 2 A. Yeah, it got to the point  
 3 that he might come every two months, and  
 4 then it would finally -- I didn't see  
 5 him, and that could have been after we  
 6 changed analyzers. But at some point he  
 7 stopped coming to see us.  
 8 Q. You mentioned you changed  
 9 analyzers, can you tell me about that?  
 10 A. Yeah, at that point because  
 11 we were doing 800 tests this machine  
 12 couldn't handle that amount of tests.  
 13 So we brought in our own analyzer, and  
 14 that was a high complex analyzer. So we  
 15 were like using a machine that would  
 16 give us confirmations basically, we  
 17 didn't have to send that urine out to  
 18 any place else.  
 19 And we -- I don't know what  
 20 period of time, but we got that machine  
 21 up and running, certified all the things  
 22 you need to make it accurate and such.  
 23 And then we stopped using the Ray Fuller  
 24 machine from ABS, and they came and  
 25 picked it up and took it away.

Page 27

1 Q. So the second machine that  
 2 you got that wasn't the Ray Fuller  
 3 machine from ABS, that machine didn't  
 4 need confirmation testing?  
 5 A. Correct.  
 6 Q. The Ray Fuller machine did  
 7 need confirmation testing?  
 8 A. Correct.  
 9 Q. Where was the samples sent  
 10 from the Ray Fuller machine?  
 11 A. The samples, again, would be  
 12 -- you know, we would use a urine cup  
 13 that I paid about \$6.50 for them just  
 14 so we could get at least a 12-panel  
 15 read of certain drugs. I mean, there  
 16 are several false positives and false  
 17 negatives that we call on that. It  
 18 might not show a drug that you're asking  
 19 or might show a drug that you're not  
 20 using. So that's why it needed to go  
 21 for further testing.  
 22 You know, Ray Fuller's machine  
 23 was a step above that, that would give  
 24 us a certain security because it was a  
 25 very accurate machine. And we verified

Page 28

1 that by doing tests with other labs and  
 2 then getting the results of those. And  
 3 for those we didn't bill them, but we  
 4 just wanted to see how accurate the  
 5 machine was. So that was a different  
 6 level, and then the new machine was at  
 7 a high complex level.  
 8 Q. For the tests from the Ray  
 9 Fuller machine that were sent for  
 10 confirmation testing, what lab did those  
 11 go to?  
 12 A. Physician Choice Labs.  
 13 Q. PCLS?  
 14 A. Yes.  
 15 Q. You mentioned that you had  
 16 to hire lab techs?  
 17 A. Correct.  
 18 Q. Did you have to hire a lab  
 19 director?  
 20 A. Eventually with the high  
 21 complex. With Ray Fuller's machine an  
 22 M.D. could be the director of it. So I  
 23 did 20 hours of CME, I took their test  
 24 and passed it, fortunately, and I became  
 25 the lab director of the Ray Fuller

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1 machine.  
 2 Q. For the lab techs were those  
 3 individuals that were employed by your  
 4 practice, were they from another  
 5 company, how did that work?  
 6 A. They were employed by me.  
 7 Pearl Whitley who was the certified lab  
 8 technician, and she had to have certain  
 9 credentials to be able to run the  
 10 machine. So we had to look for  
 11 somebody that could run the machine and  
 12 do what was necessary, so we hired her.  
 13 And then we hired -- well, we didn't --  
 14 I don't think Kiana, the collector, I  
 15 think they paid for the collector. As  
 16 did Ameriatox and most all the labs  
 17 provided a collector for you.  
 18 Q. By they do you mean PCLS?  
 19 A. Yes, correct.  
 20 Q. So PCLS paid for Kiana, the  
 21 collector?  
 22 A. Correct.  
 23 Q. You mentioned that you, you  
 24 know, got the analyzer from Ray Fuller.  
 25 How did that come about, did you meet

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1 with Ray Fuller; did he come to your  
2 office?

3 A. We did meet with him as we  
4 met with probably ten other companies  
5 that were trying to come in and get our  
6 business. And we met with Ray and  
7 there was another fellow with him, I  
8 don't recall his name, but I think we  
9 met in my office. And they presented  
10 their machine and what it could do and  
11 the tests it could run, and that's the  
12 one we chose out of them all.

13 Q. Do you remember if Phil  
14 McHugh was that other fellow with Ray  
15 Fuller?

16 A. No, I don't believe so.  
17 And, again -- and I don't remember is  
18 the truthful answer.

19 Q. Fair enough.

20 Do you remember around what time  
21 period you first got the ABS desktop  
22 analyzer?

23 A. I believe either February or  
24 March 4th of 2012, I believe is when I  
25 signed the contract for ABS.

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1 - - - - -

2 Q. I'm going to show you what  
3 is being marked as Exhibit 1.

4 MR. CAUDILL: Do you have a copy  
5 for me?

6 MR. JOHNSON: I just have three.

7 MR. CAUDILL: Do we have a copy  
8 machine in this building? I'm going to  
9 need to see the exhibit.

10 MR. WARD: You can have mine.

11 MR. CAUDILL: Do you have a  
12 copy?

13 MR. WARD: I do.

14 MR. JOHNSON: You'll probably  
15 have a copy of the rest of ours.

16 MR. WARD: Right. That's what I  
17 think.

18 MR. JOHNSON: Right. Or maybe  
19 we can just -- if you want to look at  
20 it and share it with Bo --

21 MR. WARD: No, that's fine. As  
22 long as I got it, I'm fine.

23 MR. JOHNSON: All right.

24 Q. Dr. Nickels, is your e-mail  
25 jnick98909@aol.com?

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1 Q. Do you remember roughly when  
2 you stopped using the ABS analyzer for  
3 your practice?

4 A. That would have been -- and,  
5 again, don't hold me to this, I think  
6 it was towards the end of 2012 or  
7 probably into 2013.

8 Q. Do you remember -- the new  
9 analyzer that you got that didn't need  
10 confirmation testing, do you remember  
11 what company you got that from?

12 A. I do it was called Carolina  
13 Liquids something, something. Carolina  
14 Liquid, I forget the rest of it, but  
15 ...

16 Q. So if we found out when you  
17 purchased it from Carolina Liquids, we  
18 could probably figure out when you  
19 stopped using the ABS machine.

20 Fair?

21 A. Fair enough.

22 - - - - -

23 (Thereupon, Deposition  
24 Exhibit-1 was marked for  
25 purposes of identification.)

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1 A. It is.

2 Q. And that was the e-mail that  
3 you were using back in --

4 A. That's right.

5 Q. -- 2012 or so?

6 A. Yes.

7 Q. And what's in Exhibit 1 is  
8 an e-mail chain between yourself and  
9 Manoj Kumar, correct?

10 A. That's correct.

11 Q. If you could go to the third  
12 to last page you'll see it's numbered in  
13 the bottom right-hand corner with 22467.

14 A. I have it.

15 Q. And in that e-mail you  
16 state, Manoj, I hope all is well with  
17 you. We were starting to get our  
18 collection numbers up and trying to test  
19 a wide range of insurance groups. So  
20 far I have paid Kiana for 108 tests at  
21 \$5 per collection.

22 And then below that there's a  
23 list of ten expenses. Did I read at  
24 that correctly?

25 A. You did.

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1 Q. Okay. And then if you'll  
2 flip to the next page, the expenses  
3 total \$8,103.32, right?  
4 A. Correct.  
5 Q. You note that there's been  
6 paid \$3,000?  
7 A. Correct.  
8 Q. And that was \$3,000 that  
9 Manoj Kumar paid to you, correct?  
10 A. Correct.  
11 Q. Okay. And then it says owed  
12 \$5,103.32?  
13 A. That's correct.  
14 Q. And then after that you ask  
15 Mr. Kumar, why don't you send me a  
16 check for \$9,000 to cover this and the  
17 next months expenses. You can make out  
18 the check to John Nickels and mail it  
19 to your address?  
20 A. That's correct.  
21 Q. And then if you will turn  
22 forward to the page that's Bates labeled  
23 22466, you'll see Mr. Kumar's reply.  
24 Do you see that it's dated  
25 8-16-2012 at 10:37:54?

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1 A. Yes, I do.  
2 Q. mkumar@pclabservices.com,  
3 right?  
4 A. Correct.  
5 Q. And the last line of the  
6 second full paragraph states, I will  
7 personally deliver funds as well.  
8 Did I read that correctly?  
9 A. So I'm looking at the last  
10 Dr. JN, and I don't see that there.  
11 Was it the one above it?  
12 Q. Oh, sure. So his message it  
13 says, Dr. JN, first it says, thanks for  
14 the update.  
15 Right?  
16 A. Yeah.  
17 Q. And then, you know, next  
18 sentence has a couple of paragraphs  
19 before the kindly let me know, it  
20 states, I will personally deliver funds  
21 as well.  
22 Do you see that?  
23 A. Yes, I do see that.  
24 Q. And I read that correctly?  
25 A. You did.

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1 Q. Did Mr. Kumar ever personally  
2 deliver funds to you?  
3 A. He did.  
4 Q. How often?  
5 A. I'm sorry?  
6 Q. How often did he do so?  
7 A. How often? That I can't  
8 tell you. I know maybe every other  
9 month or something like that. I just  
10 -- I don't recall how frequently he  
11 would come in to see me and give me a  
12 check.  
13 Q. So when he delivered the  
14 funds was it cash, check?  
15 A. Check.  
16 Q. Was it always a check?  
17 A. Always a check.  
18 Q. What bank did you use at the  
19 time?  
20 A. Fifth Third Bank.  
21 Q. Would you deposit those  
22 checks into Fifth Third Bank?  
23 A. I would.  
24 Q. Was that a bank account for  
25 your practice, yourself personally?

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1 A. No, it was a business  
2 account for Cleveland Back and Pain  
3 Management Center.  
4 - - - - -  
5 (Thereupon, Deposition  
6 Exhibit-2 was marked for  
7 purposes of identification.)  
8 - - - - -  
9 Q. I'm going to show you what's  
10 been marked as Exhibit 2.  
11 MR. WARD: There are two checks  
12 in that exhibit.  
13 Q. So what's in Exhibit 2, Dr.  
14 Nickels, are two checks written out to  
15 yourself, correct?  
16 A. Correct.  
17 Q. One dated 3-21-2012 and the  
18 other dated 9-11-2012?  
19 A. I believe that should be  
20 8-21-12.  
21 Q. 8-21?  
22 A. I believe so. I mean, we  
23 weren't -- the machine wasn't even  
24 running in March so ...  
25 Q. You mentioned you signed the

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1 contract in February of 2012 earlier?  
 2 A. February or March.  
 3 Q. February. So you signed the  
 4 contract around February or March?  
 5 A. Right. But it took us  
 6 probably six months to get everything  
 7 certified, get me certified, get the  
 8 machine calibrated to get the testing  
 9 accurate. And I would -- I believe  
 10 this check was from 8-21. And I think  
 11 probably these e-mails were around  
 12 August 14, August 16, August 23rd. So  
 13 I got to believe that is August 21st.  
 14 Q. Yeah. So handwriting aside  
 15 we can probably figure out when the  
 16 check was written from the bank, but  
 17 you'd agree that this is a check written  
 18 to you?  
 19 A. Correct.  
 20 Q. Okay. Do you know who MK  
 21 Land Holdings, LLC is?  
 22 A. I do not.  
 23 Q. Okay. Do you know why MK  
 24 Land Holdings, LLC would have written  
 25 you a check?

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1 A. I do not.  
 2 Q. I will represent to you that  
 3 MK Land Holdings, LLC is a company of  
 4 Manoj Kumar's.  
 5 A. That's new to me.  
 6 Q. You mentioned that, you know,  
 7 Mr. Kumar brought you checks, were the  
 8 checks he brought to you usually from  
 9 himself personally?  
 10 A. I thought these checks were  
 11 from, you know, a subsidiary of  
 12 Physician Choice Labs. And just -- I  
 13 didn't even consider that not being part  
 14 of Physician Choice Labs. And, again, I  
 15 thought he was an agent for Physician  
 16 Choice Labs. So I didn't even blink or  
 17 say anything about the MK Land Holdings,  
 18 LLC.  
 19 Q. So you felt the checks were  
 20 coming from PCLS?  
 21 A. I did.  
 22 - - - - -  
 23 (Thereupon, Deposition  
 24 Exhibit-3 was marked for  
 25 purposes of identification.)

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1 - - - - -  
 2 Q. I'm going to show you what's  
 3 been marked as Exhibit 3. And Exhibit  
 4 3 is also e-mail correspondence between  
 5 yourself and Manoj Kumar, correct?  
 6 A. That's correct.  
 7 Q. And I'd ask you to turn to  
 8 the second to last page, Bates labeled  
 9 22523.  
 10 A. I have it.  
 11 Q. And in this part of the  
 12 e-mail chain is correspondence between  
 13 yourself and Jay Chambers?  
 14 A. Correct.  
 15 Q. And could you just explain  
 16 to me who Jay Chambers was again?  
 17 A. Certainly. Jay Chambers  
 18 operated a company, I think it was  
 19 Physicians Service Bureau on Mayfield  
 20 Road in Cleveland. And he did all my  
 21 billing for probably at least 15 years  
 22 of my practice.  
 23 Q. If you'll turn to the first  
 24 page, which is where the e-mail  
 25 correspondence between yourself and Mr.

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1 Kumar begins on November 24th, 2012.  
 2 Do you see that?  
 3 A. I do.  
 4 Q. You're forwarding the  
 5 correspondence from Mr. Chambers to Mr.  
 6 Kumar?  
 7 A. Correct.  
 8 Q. And in that e-mail you say,  
 9 Manoj, Happy Thanksgiving. And then  
 10 second line, it looks like we are  
 11 finally seeing some collections. I do  
 12 have the numbers from Oral Solutions  
 13 that show how much they collect from  
 14 commercial and federal plans at this  
 15 time.  
 16 Did I read that correctly?  
 17 A. You did.  
 18 Q. Who was Oral Solutions?  
 19 A. Good question. I believe I  
 20 meant to say from Physician Choice Labs,  
 21 because I never dealt with an Oral  
 22 Solutions before.  
 23 Q. So you think you would have  
 24 been referencing, you know, the numbers  
 25 from PCLS in terms of collections from



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commercial and federal plans?

A. Correct. Because that's what we were looking for to show him what our collections were. Because, again, every time he came he pushed, you got to do more tests, you got to do more tests, you got to do more tests.

And I kept saying, well, we're not making any money on your tests, so I'm going to just continue to do what I do.

And Manoj actually went to talk to Jay Chambers, and Laura Wolmak was his assistant in the billing company that did most of my billings, and he was trying to get me to get some payouts. And that's where the above e-mail came from, and these are his numbers what we collected, and the number of samples, and the average collection per sample. And so it appears that, you know, we're -- you know, we're doing well, so you need to start sending more samples.

Q. So would Jay Chambers'

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mean, it might have been just for the ... Kiana's salary as a collector, but that would have been it. I mean, at this point I'm sure we're running samples in their machines, so ...

Q. You mentioned their machine, who do you mean by their?

A. Ray Fuller's machine.

Q. So as you sit here today you don't remember the details of what agreement you had with Phil McHugh, is that right?

MR. CAUDILL: That's asked and answered.

A. That's correct.

Q. But you would agree with me that your e-mail correspondence in November of 2012 references an agreement with Phil McHugh?

MR. CAUDILL: It's also asked and answered.

A. Yes, it does.

- - - - -

(Thereupon, Deposition Exhibit-4 was marked for

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billing company, would they be collecting for the confirmation samples that were sent?

A. No, not at all.

Q. So they would be collecting for samples sent on your desktop analyzer?

A. Correct.

Q. In that e-mail that we're talking about from yourself to Manoj Kumar, next line you state, let's get together next week if possible to discuss. I also have \$8,410.75 in expenses that I need to be reimbursed for per my agreement with Phil.

Did I read that correctly?

A. You did.

Q. Who is the Phil that you were referencing in that sentence?

A. I believe probably Phil McHugh, but I don't remember for sure.

Q. What was the agreement with Phil McHugh that you were referencing in that sentence?

A. I truly can't remember. I

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purposes of identification.)

- - - - -

Q. I'm going to show you what's been marked as Exhibit 4. And Exhibit 4 is likewise e-mail correspondence between yourself and Manoj Kumar in November of 2012, correct?

A. That's correct.

Q. And this is actually, if you'll turn back, additional e-mails on the chain that we were talking about in Exhibit 3, right?

A. Correct.

Q. And in the latest e-mail in this chain there's an attachment to it entitled, expenses for Manoj, right?

A. I'm sorry, on what page?

Q. Certainly. On page 1 --

A. Okay.

Q. -- the very latest in time e-mail on November 26th, 2012 from yourself to Manoj Kumar. There's an attachment, one of which is entitled, expenses for Manoj, correct?

Do you see the attachments line

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1 under from sent to?  
 2 A. I'm sorry, I do see that.  
 3 Q. Yes. Yes, sir. And it says  
 4 expenses for Manoj?  
 5 A. Right.  
 6 Q. And then in the body of the  
 7 e-mail you state, Manoj, I have attached  
 8 an update of what is owed to me. I  
 9 forgot to add the additional urine cups  
 10 we purchased to do the tests that you  
 11 said you would pay for. After your  
 12 last payment of \$9,000 on 9-11-12 I gave  
 13 you a credit of \$4,546 when it should  
 14 have been only \$454.60. I've made the  
 15 corrections and have attached the most  
 16 current amount due.  
 17 Did I read that correctly?  
 18 A. Yes, you did.  
 19 Q. Okay. So on 9-11-2012 Manoj  
 20 Kumar paid you \$9,000?  
 21 MR. CAUDILL: Objection. You can  
 22 answer, I'll just object to the form.  
 23 A. Specifically for that I don't  
 24 recall.  
 25 Q. Your e-mail references a

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1 check we looked at, and then the expense  
 2 list says paid \$3,000?  
 3 A. Correct.  
 4 Q. And then if you'll just turn  
 5 back to Exhibit 1 for me, just so we  
 6 can make sure we're on the same page.  
 7 There's a list of ten expenses in  
 8 Exhibit 1, right?  
 9 A. Correct.  
 10 Q. And those are the same ten  
 11 expenses totalling the same amount in  
 12 this exhibit?  
 13 A. That's correct.  
 14 Q. So going back to the expense  
 15 list in Exhibit 4, you pick up from  
 16 there and list, you know, more expenses  
 17 starting at number 11 through 17,  
 18 correct?  
 19 A. Correct.  
 20 Q. And those expenses total  
 21 \$8,845.40, right?  
 22 A. I would believe so, but I  
 23 think that would include expenses 1  
 24 through 10 also, because I can't see  
 25 where 11 through 17 would equal \$8,845.

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1 payment of \$9,000 from Manoj Kumar on  
 2 9-11-12, correct?  
 3 MR. CAUDILL: That's asked and  
 4 answered.  
 5 A. Correct.  
 6 THE WITNESS: Sorry.  
 7 Q. Let's turn to the very last  
 8 page of this exhibit, which is the  
 9 expenses for Manoj attachment.  
 10 Do you see that, it's Bates  
 11 labeled 22540?  
 12 A. I do.  
 13 Q. And then you'll see the  
 14 expenses start and they're numbered 1  
 15 through 10, and they total \$8,103, paid  
 16 \$3,000, balance \$5,103.32?  
 17 A. I see that.  
 18 Q. Is that the same expenses  
 19 that we were talking about earlier? We  
 20 can look back, if you want to?  
 21 A. Well, I'm sure that check  
 22 that we have here probably corresponds  
 23 to that same date that it -- I was paid  
 24 \$3,000.  
 25 Q. Right. So there's a \$3,000

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1 Q. Fair enough. So the total  
 2 below 17 would be the total outstanding  
 3 expenses to date when you take into  
 4 account, you know, expenses 1 through  
 5 10, and the \$3,000 paid plus the 11 to  
 6 17?  
 7 A. That's correct. I don't  
 8 have a calculator, but I think that's  
 9 accurate probably accounting.  
 10 Q. And then after that you note  
 11 there was a payment of \$9,000?  
 12 A. Correct.  
 13 Q. And that leaves a credit of  
 14 \$454.61?  
 15 A. Correct.  
 16 Q. And then you also list  
 17 expenses 18 through 32, right?  
 18 A. Correct.  
 19 Q. And the Pearl salary and  
 20 Kiana's salary, that's the Pearl and  
 21 Kiana you've talked about earlier, the  
 22 lab tech and the collector, right?  
 23 A. That's correct.  
 24 Q. And then those expenses total  
 25 or the expenses to date through expense

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1 32 totals \$15,232.13, right?  
 2 A. I will trust your  
 3 calculations.  
 4 Q. Well, that's -- I haven't  
 5 done any calculations, but that's just  
 6 what the expense list that you sent Mr.  
 7 Kumar states, right?  
 8 A. Yes, sir, that's correct.  
 9 Q. Okay. And then the expense  
 10 list you sent Mr. Kumar states total due  
 11 \$14,777.52?  
 12 A. Correct.  
 13 Q. I'm a lawyer, we don't do  
 14 math, so ... (Laughter.)  
 15 - - - - -  
 16 (Thereupon, Deposition  
 17 Exhibit-5 was marked for  
 18 purposes of identification.)  
 19 - - - - -  
 20 Q. I'm going to show you what's  
 21 being marked as Exhibit 5.  
 22 MR. WARD: Thank you.  
 23 MR. JOHNSON: Yeah, okay. Make  
 24 sure I mark the right one for you.  
 25 Q. And Exhibit 5 begins with

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1 \$16,413.03?  
 2 A. Correct.  
 3 - - - - -  
 4 (Thereupon, Deposition  
 5 Exhibit-6 was marked for  
 6 purposes of identification.)  
 7 - - - - -  
 8 Q. I'm going to show you what's  
 9 been marked as Exhibit 6. This is  
 10 another e-mail correspondence between  
 11 yourself and Mr. Kumar that Mr. Kumar  
 12 forwarded to himself, correct?  
 13 A. That's correct.  
 14 Q. Okay. And this is -- the  
 15 underlying correspondence between  
 16 yourself and Mr. Kumar is dated January  
 17 2nd, 2013, right?  
 18 A. I'm sorry, what date did you  
 19 say?  
 20 Q. January 2nd, 2013.  
 21 A. Oh, I'm sorry, you're  
 22 correct. That's absolutely right.  
 23 Q. And in this e-mail you write  
 24 to Mr. Kumar, Manoj, I just received  
 25 this report from Jay. I wanted to get

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1 e-mail correspondence between yourself  
 2 and Manoj Kumar in December of 2012,  
 3 correct?  
 4 A. January 2nd of 2013, I  
 5 believe.  
 6 Q. So --  
 7 A. Oh, I'm sorry, December 31st,  
 8 '12, you're correct.  
 9 Q. So this is an e-mail that  
 10 Mr. Kumar forwarded to himself, but the  
 11 underlying e-mail correspondence from  
 12 yourself and Mr. Kumar was December  
 13 31st, 2012, right?  
 14 A. I believe so, yes.  
 15 Q. Okay. And you state, I've  
 16 enclosed the updated bill so you can  
 17 bring funds with you next week. I'm  
 18 looking forward to seeing you and Phil.  
 19 Did I read that correctly?  
 20 A. You did.  
 21 Q. Okay. And then if you'll  
 22 turn to the attachment, that's another  
 23 expense list, correct?  
 24 A. That's correct.  
 25 Q. And the total due there is

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1 it to you before our meeting. I also  
 2 have two additional payments to add to  
 3 our current bill of \$16,413.03. Pearl's  
 4 salary of \$439.38 and ABS' fee for 150  
 5 tests of \$3,879. That brings the total  
 6 to \$20,731.41. Please bring funds to  
 7 cover these expenses. Looking forward to  
 8 seeing you tomorrow. Please check out  
 9 these enclosed numbers. John.  
 10 Did I read that correctly?  
 11 A. You did.  
 12 Q. I want to go back to Exhibit  
 13 5. In your e-mail to Mr. Kumar on  
 14 December 31st, 2012 in Exhibit 5, you  
 15 note, I'm looking forward to seeing you  
 16 and Phil.  
 17 What Phil are you referencing  
 18 there?  
 19 A. It has to be Phil McHugh.  
 20 Q. Why were you meeting with  
 21 Manoj Kumar and Phil McHugh in December  
 22 to January of 2012 to 2013?  
 23 MR. CAUDILL: Objection to form.  
 24 You can answer.  
 25 A. I can't remember. I don't



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1 think I saw Phil many times, because  
 2 like I said I don't think I could  
 3 identify him today. But, you know, he  
 4 ran the lab, I believe and, you know, I  
 5 guess he wanted to come talk about the  
 6 number of samples. Because that's all  
 7 we baffled with, and that still is what  
 8 baffles me with these expenses is  
 9 they're, you know, samples that we use  
 10 their machine for. That, you know, I  
 11 paid from Cleveland Back and Pain to  
 12 them, and that's where eventually I get  
 13 to the point that, you know, the  
 14 numbers, because we were so low, were  
 15 costing me more money than what we were  
 16 bringing in. So, you know, I was able  
 17 to reduce the price, you know, from the  
 18 \$22 to \$17, it helped tremendously.  
 19 Q. I know you mentioned you  
 20 couldn't pick Mr. McHugh out of a  
 21 lineup, you did meet with him, correct?  
 22 A. I did.  
 23 Q. Do you remember roughly how  
 24 many times you met with Mr. McHugh?  
 25 A. And I misspoke, this meeting

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1 you know, and that's probably the only  
 2 time I recall meeting him. And to be  
 3 honest, I don't recall that meeting, but  
 4 I'm assuming he came to meet with me.  
 5 Q. Just so we're all clear on  
 6 the record, regardless of the specifics  
 7 of any meeting, you do recall physically  
 8 meeting in person with Phil McHugh,  
 9 correct?  
 10 A. I do not.  
 11 Q. You don't?  
 12 A. I do not.  
 13 Q. Can you say that you didn't  
 14 meet with him?  
 15 MR. CAUDILL: Objection, he's  
 16 answered this question.  
 17 A. I don't recall meeting him.  
 18 Q. But you're familiar with who  
 19 he is?  
 20 A. Correct.  
 21 MR. CAUDILL: Objection. You've  
 22 answered that question, sir.  
 23 - - - - -  
 24 (Thereupon, Deposition  
 25 Exhibit-7 was marked for

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1 that we planned on January 2nd, again, I  
 2 don't recall meeting with Phil -- that's  
 3 not the one that said Phil, did it?  
 4 But, again, I don't recall Manoj ever  
 5 coming with Phil. He could have, but I  
 6 don't remember that time.  
 7 Q. The meetings with Phil that  
 8 you do remember, what were the  
 9 circumstances of those meetings?  
 10 MR. CAUDILL: Objection, lacks  
 11 foundation.  
 12 A. I think that was at the  
 13 beginning when we were, you know,  
 14 getting our reference lab in order.  
 15 And, you know, he was talking about the  
 16 company that was going to be doing the  
 17 confirmation testing. And I think, you  
 18 know, it was just about the business  
 19 going through, you know, what they do.  
 20 Again, we had to pick out what  
 21 drugs we wanted to test so that, you  
 22 know, they could set up the panels.  
 23 Because we could only run 12 tests on  
 24 the machine. And then I'm sure he came  
 25 just to introduce himself, say hi and --

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1 purposes of identification.)  
 2 - - - - -  
 3 Q. I'm going to show you what's  
 4 being marked as Exhibit 7. Exhibit 7  
 5 is an e-mail from Vera, and I'm probably  
 6 going to mess the pronunciation of this,  
 7 Beqaj, to Manoj. Within subject line of  
 8 invoice for Cleveland Back and Pain from  
 9 CLC, and an attachment entitled,  
 10 Cleveland Back and Pain Center  
 11 September.pdf.  
 12 MR. CAUDILL: So I'm going to  
 13 object to that question. He's not -- I  
 14 don't know how he would know what this  
 15 document is.  
 16 MR. JOHNSON: I was just  
 17 describing what the exhibit was to him,  
 18 I don't think it was a question.  
 19 Q. Do you see the document I  
 20 just referenced?  
 21 MR. CAUDILL: Objection. Again,  
 22 I don't know how he would know what  
 23 this is.  
 24 MR. JOHNSON: I'm asking if he  
 25 can see the document in front of him

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1 that I just described, not if he knows  
 2 what it is.  
 3 MR. CAUDILL: The way you  
 4 described it as an e-mail from someone  
 5 to someone, and he's not copied on this  
 6 e-mail. The question lacks foundation.  
 7 MR. JOHNSON: You're saying the  
 8 witness doesn't have a foundation to  
 9 testify to something he's physically  
 10 looking at right now?  
 11 MR. CAUDILL: He doesn't know  
 12 what it is. For all he knows you could  
 13 have typed this up this morning.  
 14 MR. JOHNSON: But my question was  
 15 not what is this document. My question  
 16 is, do you see the document I just  
 17 described in front of you.  
 18 MR. CAUDILL: All right. I'll  
 19 be -- he can answer that question.  
 20 MR. JOHNSON: I think he can.  
 21 A. I do see that document.  
 22 Q. If you will turn to the  
 23 second page of that document, there is  
 24 an invoice from Clinical Lab Consulting,  
 25 LLC, do you know who Clinical Lab

Page 60

1 any communications with Clinical Lab  
 2 Consulting, LLC?  
 3 A. Not that I remember.  
 4 - - - - -  
 5 (Thereupon, Deposition  
 6 Exhibit-8 was marked for  
 7 purposes of identification.)  
 8 - - - - -  
 9 Q. I'm going to show you what's  
 10 being marked as Exhibit 8. What's in  
 11 Exhibit 8 is a series of checks from MK  
 12 Land Holdings, LLC to CLC.  
 13 MR. CAUDILL: Objection.  
 14 MR. JOHNSON: What's the basis  
 15 for your objection?  
 16 MR. CAUDILL: Well, I mean, again  
 17 are you going to ever ask him if he's  
 18 ever seen these documents before or  
 19 knows anything about them?  
 20 MR. JOHNSON: Well, Bo, I think  
 21 I'm entitled to just describe the  
 22 exhibits for the reference point.  
 23 MR. CAUDILL: So just to be  
 24 clear, your question here is, are these  
 25 pictures of checks?

Page 59

1 Consulting, LLC is?  
 2 A. I do not.  
 3 Q. Okay. It says bill to  
 4 Cleveland Back and Pain Center, John  
 5 Nickels, and it has an address.  
 6 Is that the address of Cleveland  
 7 Back and Pain Center where you operated?  
 8 A. Yes, it is.  
 9 Q. And the invoice is for  
 10 \$1300, correct?  
 11 A. That's correct.  
 12 Q. And it has -- the  
 13 description of the invoice is  
 14 directorship fee for the month of  
 15 September.  
 16 Do you know what directorship fee  
 17 is referencing?  
 18 A. I do not.  
 19 Q. Do you know why Clinical Lab  
 20 Consulting, LLC would have sent an  
 21 invoice for your practice to Manoj?  
 22 MR. CAUDILL: Objection, lacks  
 23 foundation.  
 24 A. I have no idea.  
 25 Q. Did you yourself ever have

Page 61

1 MR. JOHNSON: That wasn't a  
 2 question, that was a statement, Bo --  
 3 MR. CAUDILL: All right.  
 4 Well ...  
 5 MR. JOHNSON: -- as a helpful  
 6 reference to what we were talking about  
 7 in Exhibit 8.  
 8 MR. CAUDILL: Okay.  
 9 Q. Dr. Nickels, Exhibit 8 is a  
 10 series of copies of checks from MK Land  
 11 Holdings, LLC to CLC. Do you know why  
 12 MK Land Holdings would have been writing  
 13 checks to CLC?  
 14 MR. CAUDILL: So I'm going to  
 15 object again because there's no  
 16 foundation for this question. He  
 17 doesn't -- he's not testified that he  
 18 even knows that this occurred, let alone  
 19 why it would have occurred.  
 20 MR. JOHNSON: Right. So I'm  
 21 asking him what his personal knowledge  
 22 of whether it happened was. And he can  
 23 answer, I do know why or I don't know  
 24 why.  
 25 MR. CAUDILL: Well, the question

Page 62

1 calls for speculation, and it lacks  
2 foundation. That's my objection.

3 Q. We'll do this another way.

4 Could you turn to the second to last

5 page. You'll see a -- in the second to

6 last page, Dr. Nickels, you'll see a

7 copy of a check entitled from MK Land

8 Holdings, LLC paid to the order of CLC,

9 that in the memo line references

10 Cleveland Back and Pain.

11 Did I read that correctly?

12 A. You did.

13 Q. Okay. Do you know why MK

14 Land Holdings, Manoj Kumar's company,

15 would have been writing checks to CLC

16 referencing Cleveland Back and Pain,

17 your practice?

18 MR. CAUDILL: Same objection.

19 A. I have no idea why.

20 - - - - -

21 (Thereupon, Deposition

22 Exhibit-9 was marked for

23 purposes of identification.)

24 - - - - -

25 Q. I'm showing you what's being

Page 64

1 Q. If you will turn to the end  
2 of this e-mail correspondence or the  
3 earliest e-mail correspondence on pages  
4 -- the second and third pages, Dr.  
5 Nickels. The first e-mail is an e-mail  
6 from Jay Chambers to yourself in  
7 November of 2012, correct?

8 A. Yes, the bottom paragraph is  
9 from Jay Chambers 11-28-2012.

10 Q. And it's to you and the  
11 subject is UDS, right?

12 A. Correct.

13 Q. And UDS is short for urine  
14 drug screen?

15 A. Correct.

16 Q. And Jay attaches a  
17 spreadsheet with totals and then there's  
18 a recap of that spreadsheet in the body  
19 of the e-mail, correct?

20 A. That's correct.

21 Q. Okay. And if you'll look at  
22 the spreadsheet reproduced in the body  
23 of the e-mail on the last page of this  
24 exhibit it's got a section for Medicaid,  
25 and it's got a section for Medicare,

Page 63

1 marked as Exhibit 9. What's in Exhibit  
2 9 is an e-mail chain from Manoj Kumar  
3 and yourself, correct?

4 A. That's correct.

5 Q. And if you'll see on the  
6 Wednesday, December 12th, 2012 e-mail,  
7 Phil McHugh is blind carbon copied,  
8 correct?

9 A. Phil McHugh is what?

10 Q. Bcc'd?

11 A. I'm sorry, is -- what was  
12 the question?

13 Q. Is Bcc'd, blind carbon  
14 copied?

15 A. Oh, I'm sorry, yes. But I  
16 don't see the cc, but ...

17 Q. You'll see under the --  
18 there's a from, sent, to, and then a  
19 bcc line at the top?

20 A. I see attachments.

21 Q. Two up from attachments.

22 A. Oh, I'm sorry, yes, bcc.

23 Q. And that says Phil McHugh?

24 A. I didn't know what that bcc  
25 meant.

Page 65

1 correct?

2 A. Yes, that's correct.

3 Q. And the far left column is  
4 entitled code, right?

5 A. Correct.

6 Q. What codes are being  
7 referenced there?

8 A. Codes are how we bill  
9 medically. So if I have an office  
10 visit the code for that is 99213. And  
11 that way when it's submitted to the  
12 insurance company they know what  
13 happened. These codes are all the  
14 specific codes for urine drug screens.

15 I'm not sure why -- well, below  
16 is that -- the top one has eight, the  
17 bottom one has ten codes. And I'm  
18 pretty sure it was the ten codes that  
19 we were billing even on the top, but  
20 these were the numbers we were looking  
21 for to see what we were being paid per  
22 code. I'm sorry, those are number 1,  
23 2, 3, 4, I'm sorry, on the bottom were  
24 only five codes.

25 Q. So the 81003 that's a code,

Page 66

1 right?  
 2 A. Correct.  
 3 Q. And then the -- at the end  
 4 the G0434 that's also a code?  
 5 A. Exactly.  
 6 Q. And the -- there's an  
 7 average paid column under that, and for  
 8 example the 81003 that has a \$3.18  
 9 average pay. And then the last code,  
 10 the G0434 has \$12.24 average paid,  
 11 right?  
 12 A. Correct.  
 13 Q. And then the G0431 has an  
 14 average paid of \$61.20?  
 15 A. Correct.  
 16 Q. Do you know why the G0431  
 17 code had the highest average paid?  
 18 A. I have no idea.  
 19 Q. For Medicaid codes there's  
 20 only one code listed there and it's  
 21 80101, correct?  
 22 A. Correct.  
 23 Q. And that has an average paid  
 24 of \$221, right?  
 25 A. Correct.

Page 68

1 those tests.  
 2 Q. And then the total paid I  
 3 assume would mean the total that was  
 4 actually paid by the insurance company?  
 5 A. You know, I believe so. I  
 6 never dealt any with the billings I was  
 7 just send -- well, not even me, the  
 8 office staff would send all the bills to  
 9 Jay Chambers and he would do the  
 10 billing. And this I'm sure was what  
 11 Manoj was looking for to show us exactly  
 12 what we were being paid per test in  
 13 hopes that we would start sending more  
 14 tests to them.  
 15 Q. Did Mr. Kumar ever pressure  
 16 you to send more tests to PCLS?  
 17 A. Pressure? I don't think he  
 18 was a pressure guy. I don't think he  
 19 -- you know, you got to do this, you  
 20 got to do that. But, you know, he kept  
 21 trying to show me the numbers and say  
 22 here, here's what you're collecting on  
 23 this machine, you know, you need to  
 24 start doing more tests through that.  
 25 And I believe that's -- was his

Page 67

1 Q. Do you know why that code  
 2 paid so much more on average?  
 3 A. I do not.  
 4 Q. What does the column entitled  
 5 encounters mean?  
 6 A. I believe that would be the  
 7 amount of urine drug screens that we  
 8 billed for.  
 9 Q. How is that different from  
 10 the units column?  
 11 A. I don't know.  
 12 Q. With Medicare at least the  
 13 numbers are the same. I was just  
 14 curious if you knew why the -- what the  
 15 difference between encounters and units  
 16 would be?  
 17 A. I don't know. It should be  
 18 the same.  
 19 Q. And then the total billed is  
 20 I assume what it means, the total  
 21 billed?  
 22 A. Correct.  
 23 Q. What does total allowed mean?  
 24 A. I believe that means what  
 25 the insurance would allow in payment for

Page 69

1 statement to me.  
 2 Q. Did Mr. Kumar ever indicate  
 3 that he would like for you to send more  
 4 tests to PCLS?  
 5 A. Do what now?  
 6 Q. Did Mr. Kumar ever indicate  
 7 to you that he would like for you to  
 8 send more tests to PCLS?  
 9 A. Yes, absolutely.  
 10 Q. In the body of the, you  
 11 know, e-mail that Jay sent to you on  
 12 11-28-2012, the I guess the second to  
 13 last sentence in the first paragraph  
 14 states, I hope this, plus the small  
 15 recap below, will give you the data and  
 16 insight you need to make a good  
 17 decision.  
 18 Do you know what decision Mr.  
 19 Chambers was referencing there?  
 20 A. Absolutely. I'm pretty sure  
 21 it had to do with, you know, the  
 22 decision whether to run more tests  
 23 through the machine or to not.  
 24 Q. I'd like you to turn your  
 25 attention to the e-mail above where



Page 62

1 calls for speculation, and it lacks  
2 foundation. That's my objection.

3 Q. We'll do this another way.  
4 Could you turn to the second to last  
5 page. You'll see a -- in the second to  
6 last page, Dr. Nickels, you'll see a  
7 copy of a check entitled from MK Land  
8 Holdings, LLC paid to the order of CLC,  
9 that in the memo line references  
10 Cleveland Back and Pain.

11 Did I read that correctly?

12 A. You did.

13 Q. Okay. Do you know why MK  
14 Land Holdings, Manoj Kumar's company,  
15 would have been writing checks to CLC  
16 referencing Cleveland Back and Pain,  
17 your practice?

18 MR. CAUDILL: Same objection.

19 A. I have no idea why.

20 - - - - -

21 (Thereupon, Deposition  
22 Exhibit-9 was marked for  
23 purposes of identification.)

24 - - - - -

25 Q. I'm showing you what's being

Page 64

1 Q. If you will turn to the end  
2 of this e-mail correspondence or the  
3 earliest e-mail correspondence on pages  
4 -- the second and third pages, Dr.  
5 Nickels. The first e-mail is an e-mail  
6 from Jay Chambers to yourself in  
7 November of 2012, correct?

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9 from Jay Chambers 11-28-2012.

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11 subject is UDS, right?

12 A. Correct.

13 Q. And UDS is short for urine  
14 drug screen?

15 A. Correct.

16 Q. And Jay attaches a  
17 spreadsheet with totals and then there's  
18 a recap of that spreadsheet in the body  
19 of the e-mail, correct?

20 A. That's correct.

21 Q. Okay. And if you'll look at  
22 the spreadsheet reproduced in the body  
23 of the e-mail on the last page of this  
24 exhibit it's got a section for Medicaid,  
25 and it's got a section for Medicare,

Page 63

1 marked as Exhibit 9. What's in Exhibit  
2 9 is an e-mail chain from Manoj Kumar  
3 and yourself, correct?

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5 Q. And if you'll see on the  
6 Wednesday, December 12th, 2012 e-mail,  
7 Phil McHugh is blind carbon copied,  
8 correct?

9 A. Phil McHugh is what?

10 Q. Bcc'd?

11 A. I'm sorry, is -- what was  
12 the question?

13 Q. Is Bcc'd, blind carbon  
14 copied?

15 A. Oh, I'm sorry, yes. But I  
16 don't see the cc, but ...

17 Q. You'll see under the --  
18 there's a from, sent, to, and then a  
19 bcc line at the top?

20 A. I see attachments.

21 Q. Two up from attachments.

22 A. Oh, I'm sorry, yes, bcc.

23 Q. And that says Phil McHugh?

24 A. I didn't know what that bcc  
25 meant.

Page 65

1 correct?

2 A. Yes, that's correct.

3 Q. And the far left column is  
4 entitled code, right?

5 A. Correct.

6 Q. What codes are being  
7 referenced there?

8 A. Codes are how we bill  
9 medically. So if I have an office  
10 visit the code for that is 99213. And  
11 that way when it's submitted to the  
12 insurance company they know what  
13 happened. These codes are all the  
14 specific codes for urine drug screens.

15 I'm not sure why -- well, below  
16 is that -- the top one has eight, the  
17 bottom one has ten codes. And I'm  
18 pretty sure it was the ten codes that  
19 we were billing even on the top, but  
20 these were the numbers we were looking  
21 for to see what we were being paid per  
22 code. I'm sorry, those are number 1,  
23 2, 3, 4, I'm sorry, on the bottom were  
24 only five codes.

25 Q. So the 81003 that's a code,

## Page 86

1 ERRATA SHEET  
 2 PAGE LINE CORRECTION AND REASON  
 3 .  
 4 .  
 5 .  
 6 .  
 7 .  
 8 .  
 9 .  
 10 .  
 11 .  
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 15 .  
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 24 .  
 25 .

## Page 88

1 I am not, nor is the court  
 2 reporting firm with which I am  
 3 affiliated, under a contract as defined  
 4 in Civil Rule 28 (D).  
 5 IN WITNESS WHEREOF, I have  
 6 hereunto set my hand this \_\_\_\_\_ day of  
 7 \_\_\_\_\_, 2020.  
 8 .  
 9 .  
 10 .  
 11 .  
 12 Kelly A. Dell'Anno, Notary Public  
 13 within and for the State of Ohio  
 14 .  
 15 .  
 16 .  
 17 .  
 18 My commission expires  
 19 October 8, 2023.  
 20 .  
 21 .  
 22 .  
 23 .  
 24 .  
 25 .

## Page 87

1 CERTIFICATE  
 2 .  
 3 State of Ohio ) SS.:  
 4 County of Cuyahoga )  
 5 I, Kelly A. Dell'Anno, a Notary  
 6 Public within and for the State of Ohio,  
 7 duly commissioned and qualified, do  
 8 hereby certify that the within named  
 9 witness, was duly sworn to testify the  
 10 truth, the whole truth and nothing but  
 11 the truth in the cause aforesaid; that  
 12 the testimony then given by the witness  
 13 was by me reduced to stenotypy in the  
 14 presence of said witness; afterwards  
 15 transcribed, and that the foregoing is a  
 16 true and correct transcription of the  
 17 testimony so given by the witness.  
 18 I do further certify that this  
 19 deposition was taken at the time and  
 20 place in the foregoing caption  
 21 specified.  
 22 I do further certify that I am  
 23 not a relative, counsel or attorney for  
 24 either party, or otherwise interested in  
 25 the event of this action.

Deposition of Mark Roth

U.S.A. et rel HARTNETT v. PHYSICIAN'S CHOICE  
LABORATORY SERVICES, ET AL.

November 10, 2020



P.O. Box 33364  
Charlotte, NC 28233  
(704) 300-9770

office@queencitycourtreporting.com  
www.queencitycourtreporting.com

9

1 A. Same -- same thing.

2 Q. Okay. What were your, and, again, I don't need some

3 granular detail on this, but in general, as a lab tech,

4 other than physically processing samples, did you have

5 any other duties?

6 A. At PCIS?

7 Q. Yes; correct.

8 A. I processed samples. I answered the phones. I helped

9 build software systems, helped develop processes. It

10 was a small company back in 2009, so there were a lot

11 of things to do.

12 Q. Okay. And how many people -- so did you physically

13 work in the lab?

14 A. Yes.

15 Q. Okay. And how many people physically worked in the lab

16 with you in 2009?

17 A. Two to three; two to four.

18 Q. Got it. And what were their roles?

19 A. One was a scientist. One was another lab tech. One

20 was a part-time quality person. One was a data entry

21 person.

22 Q. Okay. So after -- well, between 2009 and 2011 when you

23 were promoted to lab manager, did the lab itself, the

24 way it was staffed, did that change in any way, meaning

25 did it grow? Did it shrink?

10

1 A. Yeah. The lab grew.

2 Q. Okay. And how so?

3 A. Hired more people, signed more customers, ran more

4 samples.

5 Q. Okay. And by the time you were promoted to lab manager

6 in 2011, what did the lab look like at that time? How

7 many employees in the lab?

8 A. I don't have an exact number. I would estimate about

9 20. I -- you know, I --

10 Q. Sure.

11 A. Something like that.

12 Q. Okay. So when you started it was four or five

13 including yourself. By the time you were promoted to

14 lab manager, it was roughly give or take 20. When you

15 were the Vice President of Operations in 2013, how big

16 was the lab department itself, meaning how many

17 employees roughly worked in the lab for Physician's

18 Choice?

19 A. Probably between 50 and 100.

20 Q. Got it. How many -- I mean, if you were to ballpark

21 me, how many samples were you all testing on a monthly

22 basis back in 2009 when you first started?

23 A. When I first started, it was between zero and 1,000

24 samples a month.

25 Q. Okay. And by the time you became the Vice President of

11

1 Operations in 2013, ballpark me, how many samples was

2 Physician's Choice testing per month at the lab?

3 A. Between 20,000 and 40,000 samples a month

4 approximately.

5 Q. So I guess it's fair to say Physician's Choice was a

6 company that experienced exponential growth between the

7 time you started in 2009 and when you were promoted to

8 Vice President of Operations in 2013; is that fair?

9 A. I would say that it's fair to say that the company grew

10 significantly over that time period.

11 Q. Okay. And when did you stop working for Physician's

12 Choice?

13 A. In 2016.

14 Q. Okay. And did you resign? Were you terminated? Did

15 you just kind of walk out the door when its assets were

16 sold? How did that go down?

17 A. I don't know the technical definition of how my

18 employment ended. I would probably say I was let go at

19 some point in 2016. I was not part of the transition

20 and sales of the new business.

21 Q. Okay. So around the time that Physician's Choice was

22 working on selling off its assets, at that time you

23 were let go and weren't part of that transition team;

24 is that what you're saying?

25 A. I was part of the transition team, but I did not go to

12

1 the new company. So from the time the company -- I was

2 let go some time in the transitional period.

3 Q. In 2016?

4 A. Correct.

5 Q. Okay. All right. So we talked about your duties and

6 what you did as a lab tech. How about when you were a

7 lab manager, from a 30,000 foot view? Again, I don't

8 need granular detail, but what were your job

9 responsibilities as a lab manager?

10 A. Managed customer service, managed logistics, made sure

11 turnaround time was good, took care of customers and

12 supported sales with whatever they needed from the lab

13 side.

14 Q. Okay. And then how about as Vice President of

15 Operations? Again from a 30,000 foot view, what were

16 your job responsibilities?

17 A. I would say it's a similar -- similar responsibilities

18 on a bigger level: supported the sales team, managed

19 the customer service, managed the logistics department,

20 you know, worked on new product development. And,

21 again, just supported the other departments, sales,

22 billing, all of those other functions, however I could.

23 Q. Just looking back, well, let's take each one of those.

24 So when you say you supported sales, give me some idea

25 as to what were some things that you did to support the



17

1 last few years, Phil left the company on a full-time  
2 basis. Marcus was responsible for legal, compliance.  
3 Again, I don't know if he had a -- what -- if there was  
4 a full-time involvement beyond that. Joe was CEO of  
5 the company, so he was ultimately responsible for  
6 everything. And then Dinah was the Chief Quality  
7 Officer or Chief Compliance, something with compliance  
8 and quality.

9 Q. Okay. Got it. At its largest, if you were to ballpark  
10 me, how many employees did PCLS have?

11 A. I think it was I would say several hundred, 400 to 500,  
12 something like that.

13 Q. Got it. So as the company grew, was it your  
14 understanding that in the lab industry in general, kind  
15 of the compliance needs of any lab company kind of  
16 change over time in accordance with new rules and  
17 regulations that are sent out by state and federal  
18 government agencies; is that fair?

19 MR. JOHNSON: Objection. Calls for  
20 speculation.

21 Q. You can still answer.

22 A. It is my understanding that the rules and regulations  
23 change over time.

24 Q. And was there a compliance department, to your  
25 understanding, at Physician's Choice while you were --

18

1 while you were there?

2 A. Yes.

3 Q. All right. And I'm just going to just briefly use some  
4 names. You tell me whether it's your recollection as  
5 to whether these individuals were involved in the  
6 compliance department. Marcus Sowinski?

7 A. Yes.

8 Q. Dinah Meyers, was she involved in compliance?

9 A. Yes.

10 Q. How about Meg Wood?

11 A. Yes. She was the general counsel. I'm not sure  
12 there's a distinction between legal and compliance.  
13 There probably is. So she was our lawyer. I think  
14 it's a little bit different, but I would say yes.

15 Q. Okay. How about Julie Szeker, S-z-e-k-e-r?

16 A. I have no recollection of that person.

17 Q. All right. How about Alan Campbell?

18 A. Yeah. Well, yes, Alan was Executive Vice President of  
19 Finance and I think the legal team and the compliance  
20 team reported up through him.

21 Q. Okay. And do you remember an outside counsel named  
22 Jane Pine-Wood?

23 A. Yes.

24 Q. Okay. So if there was a compliance or legal question  
25 that was posed by someone below the executive team, can

19

1 you give me some sense of who typically would field  
2 that question and how it would be fielded, where it  
3 would be sent to?

4 A. It depends on the time period. So I never had a great  
5 relationship with Dinah, so most of my experience, and  
6 I can only really tell, talk about my experience, I  
7 would send most of my questions through Alan or Mike  
8 Monroe, who was our other in-house counsel. That's the  
9 route that I typically took to get compliance feedback.

10 Q. Okay. And if you ran that question through any of  
11 them, what would that person typically do to get you an  
12 answer to that question? Who would they consult, do  
13 you know?

14 MR. JOHNSON: Objection.

15 A. I can only speak on what I'm aware of. I know that  
16 Mike Monroe had regular calls with McDonald Hopkins and  
17 Jane Pine Wood. So it's my understanding that that's  
18 where a lot of that feedback probably would have come  
19 from.

20 Q. Okay. Got you. Were you aware of whether Physician's  
21 Choice at one point in time had a risk management  
22 committee?

23 A. Yes.

24 Q. And just to be clear since that was a bad question, did  
25 it have a risk management committee?

20

1 A. I believe -- I believe so, yes.

2 Q. All right. Do you have any sense of who was on that  
3 risk management committee?

4 A. I may have been on the committee. I'm trying to  
5 remember. I'm not one thousand percent certain, but I  
6 think I was on the committee at one point. I don't --  
7 Q. Okay. Anybody else? Anybody else to your  
8 recollection?

9 A. I mean, Dinah was definitely on a committee. I'm sure  
10 Mike Monroe was on the committee. I'm sure Alan was on  
11 the committee. You know, I remember being in a lot of  
12 meetings with those people. I think it's risk  
13 management. I'm not one thousand percent sure.

14 Q. That's fine. All right. Well, let me switch gears for  
15 just a second and I want to talk a little bit about  
16 physician acknowledgment forms. So while you were  
17 employed at Physician's Choice, did you have occasion  
18 to deal with physician's acknowledgment forms?

19 A. I believe we called them provider acknowledgment forms.

20 Q. Okay.

21 A. And provider acknowledgment forms, yes.

22 Q. All right. And just because I think in this  
23 litigation, everybody has referred to them as physician  
24 acknowledgment forms, if I occasionally accidentally  
25 say physician acknowledgment forms, I mean, for the

29

1 make changes to the physician acknowledgment form that  
 2 it would have physicians sign?  
 3 A. I mean, ballpark would be in the dozens of times. You  
 4 know, every time we -- every time the lab added a new  
 5 test, every time there was -- there were new LCDs  
 6 passed. I would say dozens of times.  
 7 Q. All right. When you say new LCDs passed, for the  
 8 uninitiated, what's an LCD?  
 9 A. An LCD is a local coverage determination that is put  
 10 out by Medicare MAC to govern their payment policies.  
 11 Q. And what is a MAC?  
 12 A. A mac is -- Medicare -- Medicare has regional private  
 13 companies that administer their benefits programs and I  
 14 think they're referred to as MACs for short.  
 15 Q. Got it.  
 16 A. I don't -- I don't know if I know the acronym.  
 17 Q. Okay. Any other -- I mean, if state or federal  
 18 government passed new rules and regulations and laws  
 19 related to lab testing, would that require updates to  
 20 provider acknowledgment forms potentially?  
 21 A. Potentially, yes.  
 22 Q. Okay. Any other reasons we haven't covered why  
 23 Physician's Choice may update a provider acknowledgment  
 24 form to your knowledge?  
 25 A. It's hard for me to say. It's hard for me to answer

30

1 that absolutely -- well, it's hard for me to answer  
 2 that with certainty. I would say that these are the  
 3 primary reasons. Could there be another reason?  
 4 Possibly, but these are the primary reasons.  
 5 Q. All right. And I just want to put a bow on this. The  
 6 primary reasons are what? I think you mentioned three,  
 7 but what are they?  
 8 A. Adding tests, new LCDs, new regulations, anything  
 9 compliance related, things like that.  
 10 Q. Okay. Got it. All right. I'm going to mark this as  
 11 McHugh Exhibit 3.  
 12 (WHEREUPON, McHugh Exhibit 3 was marked for  
 13 identification.)  
 14 Q. And, again, this is an e-mail. It's just one e-mail.  
 15 There's not a big thread. It looks like it's from  
 16 Michelle Dean, the Sales and Marketing Coordinator.  
 17 And if you want to just take a second and review this,  
 18 I'm going to ask you a couple questions.  
 19 A. (Reviewing.) Okay.  
 20 Q. All right. And, again, my question is kind of more of  
 21 the same. Is this another example of how Physician's  
 22 Choice would update provider acknowledgment forms and  
 23 policies for various reasons that you and I have  
 24 already talked about and identified, and then make  
 25 announcements to Physician's Choice employees that says

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1 look, there are new forms, please use these new forms?  
 2 A. Yes.  
 3 Q. All right. And who is Michelle Dean?  
 4 A. She was a marketing associate coordinator.  
 5 Q. Got it. Okay. So I want to shift gears and talk about  
 6 physician -- provider acknowledgment forms. And I want  
 7 to talk a little bit about assisting doctors with  
 8 setting up laboratories; okay? So in the lab testing  
 9 industry, for as long as you've known it, was a common  
 10 topic of discussion amongst individuals who owned or  
 11 worked in laboratories, was a common topic of  
 12 discussion whether the laboratories could assist  
 13 doctors with setting up a lab in their office?  
 14 MR. JOHNSON: Objection. Calls for  
 15 speculation.  
 16 MR. KING: Objection. You can answer.  
 17 A. There were many discussions in my career about helping  
 18 doctors set up labs, including with owners of PCLS.  
 19 Q. Got it. Okay. Were there discussions about -- and  
 20 let's -- I mean, let's go back. When you worked at --  
 21 when you were a lab tech at LabCorp, were there ever  
 22 any discussions about setting up labs in doctors'  
 23 offices?  
 24 A. No. I was a lab tech in a small lab with other entry  
 25 level lab techs. We didn't really understand, no.

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1 Q. Okay. Fair enough. So let's talk a little bit about  
 2 desktop analyzers. Were there ever any discussions  
 3 while you were employed by Physician's Choice, not  
 4 about setting one up, but whether you could or could  
 5 not set up a desktop analyzer let's say within a  
 6 doctors' office?  
 7 A. Yes. There were discussions.  
 8 Q. Okay. What does a desktop analyzer do for a doctor if  
 9 they have one in a lab that's within their office?  
 10 A. It provides a qualitative screening result for a  
 11 sample.  
 12 Q. Okay. Did Physician's Choice develop any of its own  
 13 internal compliance rules or guidance related to  
 14 whether you could assist a doctor in any way with  
 15 obtaining a desktop analyzer?  
 16 A. I'm not sure if we had an internal compliance memo.  
 17 I'd have to -- I'm not sure if there was an internal  
 18 compliance memo. There was internal compliance  
 19 discussions that happened. I, off the top of my head,  
 20 can't remember a specific policy.  
 21 Q. Okay. And tell me a little bit about those internal  
 22 compliance discussions. What do you remember about  
 23 those?  
 24 A. It is -- I'm not a lawyer, but it is my understanding  
 25 that it was a sensitive topic and the major

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1 stakeholders wanted to use third party companies to do  
2 this rather than to have the laboratory do it  
3 themselves.

4 Q. Meaning have third parties assist doctors with placing  
5 analyzers within their office as opposed to Physician's  
6 Choice itself doing it?

7 A. That is correct.

8 Q. Okay. Gotcha. I'm going to share what I'm going to  
9 mark as McHugh Exhibit 4.

10 (WHEREUPON, McHugh Exhibit 4 was marked for  
11 identification.)

12 Q. So, again, I'm going to start us up at the top. It's  
13 an e-mail from you, Michelle Dean, John Grove, and Mark  
14 Roth, I guess yourself being -- from Marcus Sowinski,  
15 sorry, to Michelle Dean, John Grove, and Mark Roth, you  
16 dated December 2, 2011. And I'm going to go to the  
17 bottom and work my way up; okay? So here's the bottom  
18 e-mail, and just read that and then I'll scroll up.

19 A. Okay. (Reviewing.) Okay.

20 Q. Okay. So first of all, it looks like Michelle Dean is  
21 a sales assistant with Physician's Choice; is that  
22 fair?

23 A. Yes.

24 Q. Okay. And who's John Grove?

25 A. He's the sales manager.

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1 Q. So Marcus Sowinski, in December of 2011, what was he?

2 A. An owner and over billing, compliance, and IT.

3 Q. Okay. And this mentions from Michelle, Randy Rowell.

4 Who was Randy Rowell?

5 A. I have no idea.

6 Q. Okay. Do you recall whether Randy Rowell was an

7 employee or independent contractor of Physician's

8 Choice?

9 A. I don't remember him as an independent employee, he or  
10 she, so I'm going to guess. I mean, I don't want to  
11 guess. I don't -- I -- the name sounds vaguely  
12 familiar but I can't place it.

13 Q. Okay. Got it. And Michelle said, "Randy Rowell wanted  
14 to know if any of you would be available around 10:30  
15 a.m. Monday morning to assist him in speaking with the  
16 Institute of Pain Management on placing an analyzer in  
17 their office." So do you recall anything about where  
18 the Institute of Pain Management is located?

19 A. I mean, I guess Pennsylvania based on the P.A. after  
20 that.

21 Q. Okay. Fair enough. It looks like after that, Marcus  
22 Sowinski responds back and says, "I can join that  
23 call." I mean, was anything surprising to you at the  
24 time by getting an e-mail like this related to the  
25 placement of an analyzer in a doctors' office?

35

1 A. No. I mean, I think that in 2011 I was -- I don't  
2 think I understood this particular idea or strategy, so  
3 I can't say that I was surprised.

4 Q. Gotcha. And, I mean, at the time, it looks like Marcus  
5 Sowinski, who's head of compliance and an owner of the  
6 company, responds back and it doesn't appear that  
7 there's any shock or surprise there. He says he can  
8 join the call to talk about it; is that fair?

9 MR. JOHNSON: Objection.

10 A. I can't speculate on what Marcus did or didn't do. He  
11 says there he joined the call. Maybe he joined the  
12 call. I don't know.

13 Q. Okay. That's fair. Do you recall any discussions  
14 after this e-mail about the placement of an analyzer  
15 for the Institute of Pain Management?

16 A. I recall discussions about analyzer placements, but I  
17 can't say for certain it's for the Institute of Pain  
18 Management.

19 Q. Okay. Gotcha. All right. So let's -- I'm going to  
20 mark this as, I think I'm McHugh Exhibit 5.]

21 (WHEREUPON, Exhibit 5 was marked for  
22 identification.)

23 Q. And I'm going to start, again, at the bottom and work  
24 my way up. But at the top it's an e-mail from Joe  
25 Wiegel to Michelle Dean with a carbon copy to yourself

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1 and Marcus Sowinski. The original e-mail looks like  
2 it's from Michelle Dean to Marcus December 13, 2011.  
3 Go ahead and review this and I'll scroll up when you're  
4 ready.

5 A. (Reviewing.) Okay. Okay. Okay. Okay.

6 Q. All right. So going down to the bottom, it looks like  
7 Michelle e-mails Marcus Sowinski and says, "We want to  
8 get a training session about our analyzer offerings  
9 through Select Labs in Texas for the reps." So my  
10 question about that is what do you recall about  
11 Physician's Choice and any analyzing -- analyzer  
12 offerings it had through Select Labs?

13 A. Select Labs helps physicians build -- they place  
14 analyzers and helps physicians build labs.

15 Q. Okay.

16 A. We had a partnership with them. They were a third  
17 party company.

18 Q. Okay. And is that kind of what you were talking about  
19 earlier, that there were discussions about working  
20 through third parties to assist, third parties other  
21 than Physician's Choice to assist doctors with setting  
22 up labs?

23 A. Yes.

24 Q. Okay. It looks Marcus then responds back to Michelle  
25 and says, "You might want to ask Joe if it's best we

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1 back and amend that after Seth Johnson asks his  
2 questions, but for now I think I'm good. Thank you  
3 very much for your time. I really appreciate it.  
4 A. Sure.  
5 MR. KING: Do you mind if we take a short  
6 break to use the restroom before we get  
7 going?  
8 (WHEREUPON, a brief recess was observed.)  
9 EXAMINATION BY MR. JOHNSON:  
10 Q. Mr. Roth, my name is Seth Johnson. I'm an assistant  
11 United States attorney for the Western District of  
12 North Carolina and I represent the United States in  
13 this case. Do you understand that?  
14 A. Yes.  
15 Q. When we were talking earlier about your experience, is  
16 it fair to say that you were on the operations side?  
17 A. Yes.  
18 Q. How much interaction did you have with specific  
19 customers or doctors?  
20 A. Early on, I had more interaction; we had fewer people.  
21 And as time went on and I had multiple levels and  
22 multiple direct reports, I had less involvement  
23 directly.  
24 Q. Was that usually handled by the sales team?  
25 A. The sales team had the best relationships with the

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1 doctors. They talked to the doctors the most. Then it  
2 was probably the customer service team which did report  
3 up through me later on in the company.  
4 Q. Are you familiar with the doctor John Johnson?  
5 A. I am familiar with the name of the doctor John Johnson.  
6 Q. What do you know about him?  
7 A. He was a doctor in Pittsburgh that was sending samples  
8 through another lab, then came to PCLS, something like  
9 that.  
10 Q. Do you remember the name of that other lab?  
11 A. Universal Oral Fluids.  
12 Q. Did I hear you right that you said he was sending  
13 samples through another lab or was that through another  
14 lab or to another lab?  
15 A. To another lab, through -- the samples I think went to  
16 Universal, were run for screening, and then came to us  
17 for confirmation.  
18 Q. Okay. That's actually what I wanted to talk to you  
19 about. So PCLS and Universal had a business  
20 arrangement; correct?  
21 A. There was a -- there was some relationship. I don't  
22 know if it was contractual relationship or just a  
23 talking and working together, but, yeah, there was some  
24 relationship there.  
25 Q. Whatever that relationship was, do you remember when

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1 that started?  
2 A. 2000 -- it was 2010, 2011 I think. I think it was  
3 probably 2010 or 2011.  
4 Q. Do you remember how long that lasted?  
5 A. I think it lasted about a year plus or minus. Maybe a  
6 little bit less, maybe a little bit more.  
7 Q. And correct me if I'm wrong, but I believe you  
8 described the nature of that relationship as doctors  
9 would send samples first to Universal for testing and  
10 then those samples would be sent on to PCLS for  
11 confirmation testing?  
12 A. That is my understanding.  
13 Q. Okay. And the testing at Universal, was that -- that  
14 would have been qualitative testing; right?  
15 A. That is my understanding, correct.  
16 Q. And then PCLS would do the quantitative confirmation  
17 after for the same sample sent by that particular  
18 doctor?  
19 A. That is my understanding, yes.  
20 Q. Do you know why the arrangement between PCLS and  
21 Universal ended?  
22 A. I am not one hundred percent certain, but I believe  
23 Universal was bringing in the confirmation equipment  
24 and thereby competing and eliminating the need to work  
25 with PCLS and that, I believe, unraveled the

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1 relationship.  
2 Q. Did you yourself ever deal with or talk to anyone from  
3 Universal?  
4 A. There were two people I talked to. One was Bill Hughes  
5 who owned Universal. The other was his lab manager. I  
6 can't remember his name, but I remember because I ran  
7 into him in the last few years.  
8 Q. Are you aware that Mr. Hughes recently pled guilty to  
9 healthcare fraud charges?  
10 A. I believe so. I don't know how recently. I know that  
11 I read the file in this case and John Johnson seems to  
12 be in jail and I assumed that Phil Hughes was in a  
13 similar, but I don't know if I knew that for certain.  
14 Q. Sure. And I was just asking if you yourself were  
15 aware. Do you know, at the time you were interacting  
16 with Mr. Hughes, what time period would that have been?  
17 A. 2010, 2011, 2012, something like that.  
18 Q. During that time, were you or anyone else that you know  
19 of at PCLS aware that Hughes and Universal were paying  
20 kickbacks to doctors?  
21 MR. VILLMER: Objection. You can answer.  
22 A. I am aware that Bill Hughes had convinced physicians  
23 that as long as he did the billing for them, it was all  
24 a kosher thing. I believe we -- I believe the company  
25 had a -- I believe PCLS did not believe that that was a

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1 that -- something like that. But I'm not a hundred  
2 percent sure.

3 Q. Fair enough. I just want to you know what you -- what  
4 you're sure about -- Mr. Roth. I apologize for having  
5 to drag you up the screen. The same question, do you  
6 know who a Dr. John Nichols is?

7 A. I believe I'm familiar with Dr. John Nichols, but I  
8 think that I'm familiar with him because I think,  
9 correct me if I'm wrong, wasn't his name in one of  
10 these filings? I think I read the filings and I think  
11 that that's how I'm familiar with him. I can't  
12 remember really otherwise.

13 Q. Correct. He was a pain management doctor at Cleveland  
14 Back and Pain. But, yes, he is referenced in the  
15 United States' Complaint. Outside of your just recent  
16 reading, any knowledge of Dr. John Nichols?

17 A. The name sounds familiar, but I don't know -- I can't  
18 say for certain that I remember him. You know, we work  
19 with thousands of physicians. I -- you know, the name  
20 sounds familiar.

21 Q. Did you have any involvement with setting up an  
22 analyzer lab with either Dr. John Nichols or Dr. John  
23 Johnson?

24 MR. VILLMER: Objection as to the form of the  
25 question. You can answer.

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1 A. To my knowledge, I never set up a lab for either of  
2 them. Whether -- whether I was asked to help with  
3 something, I can't say for certain, but I'm not sure I  
4 remember actually setting up a lab that ran for either  
5 of them. You know, maybe there was discussions, but I  
6 don't think either of them actually ever had a lab.

7 Q. Were you ever involved with setting up any physicians  
8 with an analyzer in the lab?

9 A. During my time at PCLS, I don't remember. Through my  
10 time at PCLS, I don't remember specifically setting up  
11 a lab for a doctor. I remember using -- introducing  
12 labs -- Select to doctors. I'm just trying to remember  
13 whether or not -- I don't remember setting up a lab for  
14 a doctor at PCLS. I really -- I really don't have that  
15 memory.

16 Q. Do you remember having knowledge of anyone else at PCLS  
17 setting up a lab for a doctor?

18 A. Yeah. I think that I -- I think that I had heard that  
19 Manoj was working with Select and US Speciality to set  
20 up labs for physicians.

21 Q. Did you ever hear anything about PCLS paying expenses  
22 associated with setting up analyzer labs for  
23 physicians?

24 A. The extent of my knowledge about that particular  
25 question is what I read in the filings. Beyond that, I

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1 don't remember. You know, maybe I -- maybe there was  
2 an e-mail that came out. I don't remember specifically  
3 PCLS setting up labs for physicians or my involvement  
4 in that.

5 Q. Going back more broadly, you mentioned that there was  
6 discussions among, you know, the owners and people at  
7 PCLS about helping doctors set up labs; right?

8 A. Yes.

9 Q. And when you mentioned owners there, that included Phil  
10 McHugh; correct?

11 A. Yes.

12 Q. Who else would that have included?

13 A. It would have included Doug Smith, Marcus Sowinski, and  
14 Joe Wiegel.

15 Q. And I believe you testified the issue was  
16 controversial, something to that effect?

17 A. Yes. It was controversial.

18 Q. Can you expound on that a little bit for me?

19 MR. VILLMER: Objection to the form. You can  
20 answer.

21 A. I am not a lawyer, but there is an inherent -- there's  
22 an inherent issue with a reference lab setting up a  
23 physician lab that is referring samples. And I think -  
24 - I believe that is why we wanted to use -- the company  
25 decided to use third parties to do that.

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1 Q. When you say inherent issue, what's the inherent issue?

2 A. There's an OIG advisory opinion that describes joint  
3 venture relationships between reference labs and  
4 referring physicians and there's inherent conflict  
5 there when you turn a referral source into a management  
6 customer.

7 Q. What's that conflict?

8 MR. VILLMER: Objection to the form of the  
9 question. You can answer.

10 A. There appears to be enumeration and issues about fair  
11 market value because the willingness of the reference  
12 lab to help build a lab at cost or below cost is higher  
13 when you're getting the referrals. So it's highly  
14 advised that reference labs do not enter into these  
15 joint venture agreements with referring customers.

16 Q. And that advisory opinion, was that something you were  
17 aware of when you were at PCLS?

18 A. I'm not -- I'm not one thousand percent certain when I  
19 first read the advisory opinion. I believe -- I read a  
20 lot of opinions. I may have read it as PCLS. I may  
21 have read it subsequently. I couldn't -- I don't want  
22 to say for certain that I was aware of that at PCLS. I  
23 may have.

24 Q. In terms of the range of options that were discussed  
25 with regard to setting doctors up with analyzers, can

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1 you talk to me a little bit about that?

2 MR. VILLMER: Objection to the form of the

3 question. You can answer.

4 A. I believe that, you know, there's several ways to

5 structure relationships with doctors. There's

6 experience leases. There's range and rental programs.

7 Most of these went through Select Labs and US

8 Speciality to my knowledge.

9 Q. Was there any discussion of PCLS providing the services

10 directly or paying for those services?

11 A. There was some discussion.

12 MR. VILLMER: Objection to the form of the

13 question. You can answer.

14 A. There was discussion.

15 Q. Can you elaborate a little bit on that discussion?

16 What were the details of it?

17 A. You know, I think to the best of my knowledge, it came

18 up and, you know, the optics of providing -- the optics

19 of doing it as the referring lab regardless of, you

20 know, regardless of all the safe harbors and advisory

21 opinions were not particularly good. You know, I think

22 at the time Millennium was giving free cups to all of

23 their clients. And they settled for, you know, I think

24 700 million dollars. And so I think the company

25 decided it wasn't the route it wanted to go given some

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1 of those outcomes.

2 Q. I'm going to try and show you Government's Exhibit 1.

3 (WHEREUPON, Government's Exhibit 2 was marked

4 for identification.)

5 Q. Do you see that, Mr. Roth?

6 A. Yes. Give me a second.

7 Q. There's a -- I'll start from the bottom. That might

8 make a little bit more sense to you.

9 A. Okay.

10 Q. There's an initial e-mail and it's addressed from

11 Brianna Deal at PCLS to Team 1, which seems like an e-

12 mail for --

13 A. Uh-huh.

14 Q. And then as we go up, Larry Morgan sends an e-mail

15 around to the group and then Brian Morgan -- or Brian

16 Montgomery sends an e-mail around to the group. And

17 I'll represent to you that you were included right here

18 in that e-mail chain. Do you see that, Mr. Roth?

19 A. Yes. Yep. Uh-huh.

20 Q. Okay. Let's go down to Mr. Montgomery's e-mail,

21 specifically the heading "Healthcare Associates." It

22 says Manoj, Mark, and I had a meeting with COO Joel and

23 Lab Director Grace on Tuesday. Went great! They want

24 to get analyzer and start using PCLS. Waiting on Manoj

25 to get paperwork, then I will hand deliver them to

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1 Joel." Did I read that correctly?

2 A. Yes.

3 Q. Do you remember Healthcare Associates and anything to

4 do with an analyzer related to them?

5 A. I do not. I'm not sure if I'm the Mark in reference

6 there. Based on the context, I believe that's Mark

7 Thrash. I -- you know, I understand -- I understand

8 this e-mail chain.

9 Q. And what's your understanding of the e-mail chain, Mr.

10 Roth?

11 A. I believe we had a partnership with a group in Texas

12 and I believe they, again, competed with us and we were

13 trying to go market to their customers directly. You

14 know, I think they had some relationship directly with

15 their customers on the revenue side. I don't know

16 exactly what. But I believe this is an e-mail chain

17 reflecting the work to market to these customers, have

18 them work with us directly.

19 Q. Do you remember what that group in Texas was called?

20 A. It went by several different names. They had several

21 different laboratories. One was called Medicus Labs.

22 One was called -- honestly, it's escaping me. I can

23 confirm it if someone -- if you knew it, but I really

24 can't remember what the name of the entire group was

25 called.

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1 Q. That's fair. Do you know what Mr. Montgomery was

2 referencing when he wrote that Healthcare Associates

3 wanted to get an analyzer and start using PCLS?

4 A. They wanted to build their own in house screening

5 laboratory is my interpretation of this.

6 Q. Do you know whether or not PCLS had or was going to

7 have any role in Healthcare Associates doing that?

8 A. I believe that we were still going to introduce them to

9 US Speciality or Select Lab Partners. I mean, I -- you

10 know, whether or not we contemplated doing it

11 internally, I really don't remember a time that we had

12 -- you know, we were sending analyzers to customers or

13 even had them available or helping with -- licenses.

14 So I think we were just introducing them to US

15 Speciality, is my understanding, who would then help

16 them build a screening lab.

17 Q. Okay. So if PCLS introduced a doctor to, you know, US

18 Specialty or another, you know, analyzer company,

19 setting up the lab, that would be handled between the

20 doctor and that company without any involvement from

21 PCLS other than the initial reference?

22 MR. VILLMER: Objection to the form of the

23 question. You can answer.

24 A. To the extent of my knowledge, that is my

25 understanding.

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1 Q. All right. Thank you, Mr. Roth. You can -- are you  
2 aware of any instances at PCLS where that's not how it  
3 worked, i.e., PCLS had more involvement other than just  
4 the initial reference or referral to the lab company?  
5 A. I believe the knowledge that I have is again from the  
6 filings that, you know, stated that PCLS was trying to  
7 help a few doctors build labs. You know, I think that  
8 there were discussions, but I really don't know if any  
9 labs for any customers, I don't think any of them got  
10 off the ground with PCLS directly. I think it's a lot  
11 of work to set up a physician office lab and I highly  
12 doubt anybody at PCLS had the time to do it. So I do  
13 think that for the most part it was through third party  
14 introductions.  
15 Q. So if that was ever done at PCLS or by anyone at PCLS,  
16 that was done without your involvement or knowledge;  
17 correct?  
18 A. I may have been involved or was on an e-mail chain  
19 talking about it, but I don't actually think -- I would  
20 be surprised if anything was actually done, a lab was  
21 started and I knew about it. That would surprise me.  
22 Q. Sitting here today, you don't remember being involved  
23 in anything like that?  
24 A. Correct. I don't remember being involved in PCLS  
25 getting a doctor's laboratory up and running. I really

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1 -- to the best of my knowledge, I really -- I'm  
2 struggling to remember that.  
3 Q. You don't remember being involved with, for example,  
4 helping with the -- licensure?  
5 A. To the best of my knowledge, I don't think that was  
6 something that I knew about it or did anything with at  
7 PCLS.  
8 Q. You were not involved with paying any expenses to  
9 doctors related to setting up their lab; correct?  
10 A. I was not involved in paying or, you know, getting a  
11 doctor paid for setting up a lab other than, again,  
12 what I read in the filings.  
13 Q. And to be clear, you personally did not have any  
14 involvement with the matters that you read in the  
15 filings; correct?  
16 A. To the best of my knowledge, I really don't think I  
17 did. You know, I don't think we -- I really don't  
18 remember doing anything for any of those doctors at  
19 all.  
20 Q. So if something like that was done, that would have  
21 been separate and apart from what you were discussing  
22 regarding setting up analyzers by referring them to a  
23 third party company; correct?  
24 MR. VILLMER: Objection. Asked and answered.  
25 MR. KING: Objection. Answer.

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1 A. Yeah. If it was done, it was done outside of my  
2 knowledge really. I -- and, again, I thought that the  
3 majority of these went through third party -- third  
4 party vendors.  
5 Q. Do you know who Dr. Yunus Shah is?  
6 A. That name sounds familiar, but I'm not one thousand  
7 percent. I've worked with several different doctor --  
8 is it Shaw or Shah? Shaw?  
9 Q. Shah. S-h-a-h.  
10 A. Yeah. I've worked with several Dr. Shahs -- Shahs so  
11 I'm not certain that I know the one you're referring  
12 to.  
13 Q. But anything that jumps out as you're sitting here now  
14 about Dr. Shah other than just your normal course of  
15 dealings with him at PCLS?  
16 A. I believe there was a Dr. Shah we worked with very  
17 early on in the company who was a stickler and sent us  
18 a bunch of blinded samples and then crated us against  
19 someone else. I believe that was Dr. Shah, but I can't  
20 -- I'm not one thousand percent.  
21 Q. What about a Dr. Gregory Masimore, any knowledge of  
22 him?  
23 A. Dr. Masimore was a physician that Manoj had a  
24 relationship with somewhere in the Midwest, maybe  
25 Indiana, somewhere like that, Michigan. I don't --

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1 somewhere in the Midwest.  
2 Q. What's your understanding of Mr. Kumar's relationship  
3 with Dr. Masimore?  
4 A. I believe he was a -- he may have worked in the office.  
5 He may have had some business relationship with him.  
6 I'm not one thousand percent sure. I think -- again,  
7 I've read the filings. I think in the filings it says  
8 he was the officer manager, but I don't think I was  
9 aware of that at the time.  
10 Q. Sure. And I'm just asking for your independent  
11 knowledge, you know, outside of the government's  
12 complaint back when you were at PCLS.  
13 A. Yeah. I don't think I really understood that  
14 relationship to be completely honest. And, again, I  
15 had zero transparency into any of the sales and the  
16 billing, who was getting paid commissions. You know, I  
17 was -- that was all above my level, so I don't think I  
18 really understood any of those dynamics at the time. I  
19 do know that he had a relationship with Dr. Masimore  
20 more than just being, you know, a friend.  
21 Q. What about a Dr. Sinker Jahandra, have you ever heard  
22 of him?  
23 A. It sounds familiar, but I can't place that one.  
24 Q. Fair enough. What about a Dr. Orlando Peretti?  
25 A. He was a doctor in Florida that we worked with. Again,



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1 fair to say?

2 A. Yes.

3 Q. And that's despite due diligence that was done on that

4 particular loan; is that fair?

5 A. I paid him back. I can't remember the due diligence

6 that was done.

7 Q. Yeah. I mean, regardless of what level of due

8 diligence was done, you paid Mr. McHugh back at a high

9 rate of interest; right?

10 A. Yes.

11 Q. Okay. Based upon all the e-mail correspondence that

12 you've been presented with today by both myself and the

13 Government's lawyer, is it fair to say that when

14 discussions were had amongst Physician's Choice

15 executive team members that you were a part of about

16 what can or can't be done related to the placement of

17 analyzers in the doctor's office, that --

18 MR. JOHNSON: Objection. Calls for

19 speculation.

20 MR. VILLMER: Let me be clear and finish my

21 question. I'm asking specifically about

22 conversations that he was a part of.

23 Q. So for the conversations that you were a part of with

24 the Physician's Choice executive management team

25 related to the placement of analyzers within doctors'

78

1 offices, were those discussions by and large

2 discussions that included at least one member from

3 compliance, mainly Marcus Sowinski, in those

4 discussions?

5 A. Yes.

6 Q. Okay. I don't believe I have any further questions.

7 Thank you very much for your time.

8 MR. JOHNSON: Nothing further from the

9 Government. Thank you for your time,

10 and, again, I apologize for the

11 technical difficulties we experienced on

12 our end.

13 (Deposition Completed.)

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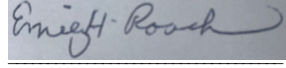
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STATE OF NORTH CAROLINA CERTIFICATE  
COUNTY OF MECKLENBURG

I, EMILY HULLEY-ROACH, Verbatim Court Reporter and  
a Notary Public in and for the County of Mecklenburg, State  
of North Carolina, do hereby certify that there came before  
me the following named person, to wit: MARK ROTH; that the  
foregoing pages number 1 through 78 are a true and accurate  
record of the testimony given by the witness, to the best of  
my knowledge and belief.

I further certify that I am neither attorney or  
counsel, not related to or employed by, any of the parties  
to the action in which this deposition is taken, and further  
that I am not a relative or employee of any attorney or  
counsel employed by the parties hereto, nor interested  
directly or indirectly in the matter in controversy, or  
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand on  
this the 20th day of November, 2020.

  
Emily Hilley-Roach  
Notary No. 20033290011  
My Commission Expires: December 7, 2023

80

WITNESS CERTIFICATION

I, MARK ROTH, hereby certify,

That I have read and examined the contents of the  
foregoing 86 pages of record of testimony as given by me at  
the time and place herein aforementioned;

And that to the best of my knowledge and belief,  
and foregoing pages are a complete and accurate record of  
all of the testimony given by me at said time, except as to  
where noted on the attached errata addenda.

\_\_\_\_\_  
MARK ROTH

Sworn to and subscribed before me,  
this the \_\_\_\_ day  
of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public



1

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NORTH CAROLINA  
3 CHARLOTTE DIVISION

4

5 UNITED STATES OF AMERICA, )  
6 ex rel., TARYN HARTNETT, )  
7 and DANA SHOCHED, )

8 Plaintiffs, ) CIVIL FILE NO. 3:17-CV-37  
(CONSOLIDATED WITH CIVIL  
9 ) FILE NO. 3:17-CV-46)  
10 )  
11 PHYSICIANS CHOICE )  
LABORATORY SERVICES, )  
12 DOUGLAS SMITH, PHILIP )  
McHUGH AND MANOJ KUMAR )  
Defendants. )

13

14 VIDEO TAPED DEPOSITION FOR PLAINTIFF

15

16 \* \* \* \* \*

17

18 DEPONENT: YUNUS SHAH, M.D.

19 DATE: AUGUST 20, 2020

20

21

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3

1 I N D E X

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5 CROSS EXAMINATION BY MR. CAUDILL 87

6 REDIRECT EXAMINATION BY MR. JOHNSON 110

7

8

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15 \* \* \* \* \*

16

17 The video taped deposition of YUNUS

18 SHAH, M.D. was taken on behalf of the Plaintiffs before

19 Denise L. Cline, Notary Public for the State of

20 Kentucky at Large, at the offices of Soergel, Abell,

21 Arnold & Davis, 2950 Breckenridge Lane, Suite 11A,

22 Louisville, Kentucky, on August 20, 2020, at about 1:00

23 p.m. Said deposition was taken pursuant to notice for

24 purposes of discovery and as provided by the Federal

25 Rules of Civil Procedure.

4

1 VIDEOGRAPHER: And we are now on the

2 record. This is the beginning of media unit one of the

3 backup recording and media unit one of the master

4 recording.

5 This is a video deposition of Yunus

6 Shah. Today's date is August 20th, 2020 and the time

7 is 1:10 on the video monitor. We are taking the

8 deposition at the offices of Soergel, Abell, Arnold &

9 Davis at 2950 Breckenridge Lane, Louisville, Kentucky.

10 This case is captioned Unites States of

11 America, ex rel., Plaintiff, versus Physicians Choice

12 Laboratory Services, et al, Defendant. This case is

13 filed in the United States District Court, the Western

14 District of North Carolina, Charlotte, at Charlotte.

15 It's a Civil File 3:17-CV-37 consolidated with Civil

16 File No. 3:17-CV-46.

17 My name is Brian Zirnheld. I'm the

18 videographer today. The court reporter is Denise

19 Cline. And if counsel will now please introduce

20 themselves and whom they represent.

21 MR. JOHNSON: Seth Johnson, Assistant

22 United States Attorney for the United States of

23 America.

24 MR. CAUDILL: Bo Caudill for the

25 defendant Philip McHugh.

1 correspondence though, right?

2 A Yes.

3 Q And that was after your attorney Khalid

4 Kahloon stated I could contact you directly, right?

5 A Yes.

6 Q And our email correspondence was just

7 about scheduling, correct?

8 A Correct.

9 Q And no substantive discussion between

10 us, i.e. you know, you're going to testify to this

11 today, anything of that nature?

12 A No.

13 Q And, Dr. Shah, you're a doctor, correct?

14 A Yes.

15 Q What type of doctor are you?

16 A I'm an anesthesiologist.

17 Q How long have you been practicing?

18 A Since 2003. Full-time practice since

19 2003.

20 Q You said full-time since 2003. Were you

21 part-time before that?

22 A Well, I was -- I was a fellow. So in

23 2002, I finished my residency. I had a fellowship in

24 2002. So I entered private practice in 2003. It was

25 the same group that I was doing the fellowship with.

1 So that's why I ...

2 Q You mentioned you're an anesthesiologist

3 now. Where do you currently practice now?

4 A I practice at Norton.

5 Q Norton. Is that here in Louisville,

6 Kentucky?

7 A Yes. It's a group of hospitals here in

8 Louisville, Kentucky.

9 Q How long have you been at Norton?

10 A Since 2002. I mean, 2003, I apologize.

11 Q You've been at Norton --

12 A All this time.

13 Q -- all the time?

14 A Yeah, full-time. You know, now, I'm not

15 employed by Norton. We are a private practice, but

16 our -- the hospital we work at is Norton. And we've

17 been at that hospital since long before 2003, but I've

18 been there with that group since 2003.

19 Q You mentioned you were in private

20 practice. What's the name of that practice?

21 A OAC, Obstetrics & Anesthesia

22 Consultants.

23 Q Let's -- I'd like to just get a general

24 overview of your kind of career and practice. Let's

25 just go back to the beginning and start there --

1 A Sure.

2 Q -- and work our way through. Where did

3 you go to med school?

4 A In India.

5 Q What was the name of the med school?

6 A Government Medical College.

7 Q When did you graduate?

8 A I finished in -- I believe I finished

9 med school in '92. I finished my internship in '93.

10 So '93 is when I was done basically.

11 Q Did you specialize in anything there?

12 A Well, the specialization comes after

13 that, and so I was working in a general capacity until

14 I came to U.S. in 1998 and did my residency in

15 anesthesia at University of Louisville here in

16 Louisville, Kentucky. And then did my fellowship in

17 obstetric anesthesia, so that's a specialization in OB

18 anesthesia. I did that fellowship in 2002 to 2003, and

19 then I entered private practice doing obstetric

20 anesthesia since then. And somewhere around -- do you

21 want me to keep going and explain?

22 Q Yes. Yes, sure.

23 A So somewhere around 2009 or '10,

24 somewhere around there, is -- I had an interest in

25 doing some interventional pain management. So I was

1 doing some procedures and stuff at Norton's, and that

2 eventually led me to join a private practice in

3 southern Indiana where Manoj was the business manager.

4 So that was my first contact with Manoj.

5 And so that practice -- I was doing pain

6 management in New Albany, Indiana, for awhile with

7 them, but that practice eventually dissolved. And

8 following that I started my own private practice in

9 Elizabethtown, Kentucky.

10 Q Let me stop you there, and then we'll

11 kind of fill in some of the gaps and come back. So

12 since 2003 on, you've been an anesthesiologist and

13 working at Norton, correct?

14 A Yes.

15 Q But you know, Norton is just the

16 hospital facility where you're --

17 A Right.

18 Q -- doing that, right?

19 A Right.

20 Q But you've had -- I guess, that's been

21 in your capacity as a private practice doctor?

22 A Yes.

23 Q Okay. And in 2009, you started a

24 private practice in pain management -- or joined a

25 private practice?

1 A Joined a private practice. I think it  
2 was 2009. I may be mistaken on the date when I joined  
3 the initial pain management in New Albany. I'm not  
4 quite sure when that was. But somewhere around there I  
5 joined the private practice in Indiana and started  
6 doing some pain management there.

7 Q Let me stop you there.

8 A Yes.

9 Q What was the name of that pain  
10 management practice in Indiana?

11 A I think it was called -- gosh, I  
12 forgot -- Pain Management of Southern Indiana or  
13 something like that. Pain -- Pain -- Pain Management  
14 Centers of Southern Indiana or something like that. I  
15 can't -- it was a longer name. I don't exactly recall  
16 what it was.

17 Q Do you recall how many doctors were in  
18 that practice?

19 A Many. There were one, two, three, four,  
20 five, six including the owner, I believe. Again, I may  
21 be mistaken on that, but I think -- as far as I can  
22 remember. I'm trying to visualize who all I -- the  
23 names or at least -- yeah, I think about six. Six  
24 sounds right.

25 Q And you mentioned that's where you met

1 that I would be reimbursed a certain amount of money,  
2 and they, you know, were telling me that I needed to  
3 have -- bring in a certain amount of reimbursement.

4 And because I wasn't generating, meaning  
5 I wasn't seeing that many patients, so -- but that's,  
6 of course, not my function. I don't schedule the  
7 patients. But regardless, they said, well, you're not  
8 seeing enough patients to be able to justify that  
9 salary. So we're going to have to let you go.

10 And that was, you know, without giving  
11 me due notice or anything like that. There was a whole  
12 other issue with that. But regardless, they said,  
13 well, we can't, so you'll have to -- you know, we'll  
14 have to let you go. And then while that process was  
15 ongoing, they were investigated by the FBI, and their  
16 offices got shut down.

17 Q Do you know what the FBI was  
18 investigating them for?

19 A I'm not -- I had a conversation with the  
20 FBI, but they wanted to ask primarily what -- you know,  
21 how Dr. Tewari was -- you know, how he treated patients  
22 and all of that stuff, you know, what things I had seen  
23 in the practice and things like that. So that was --  
24 they were primarily investigating Tewari --

25 Q Was Tewari --

1 Manoj Kumar, correct?

2 A Yeah. He was the manager of -- the  
3 business manager of the practice there.

4 Q What did he do for that practice as the  
5 business manager?

6 A He was essentially the first point of  
7 contact where you -- you know, so when you had the  
8 first like an initial recruitment doc, he was the one  
9 who would communicate with you. And then less contact  
10 while -- when you join the practice, other than, you  
11 know, issues of reimbursement and things like that. If  
12 you had an issue, you would tell him, hey, you know,  
13 this is this, this is that.

14 So other than that, there was not --  
15 clinically there was not much that, you know, we needed  
16 to interact on, unless there were like issues like  
17 supplies or something that we needed and he would have  
18 to authorize something like that. Then otherwise, not  
19 much.

20 Q You mentioned you left the practice in  
21 Indiana, correct?

22 A That practice dissolved.

23 Q Why did the practice dissolve?

24 A I think the owner was -- well, let me  
25 take it -- so they -- you know, we had an agreement

1 A -- who was -- who was the owner of the  
2 practice. So that was the main -- so again, I don't  
3 know for a fact what they were investigating, but they  
4 asked me, you know, questions about patient care and,  
5 you know, how he -- you know, did he push for  
6 procedures, was he giving out medications in exchange  
7 for procedures, things like that, you know, just -- so  
8 that was -- so the practice essentially was  
9 investigated and dissolved. At that point, you know,  
10 once that thing came into -- so slowly all of those  
11 sites shut down basically.

12 Q But you were let go before that, right?

13 A I was let go before that, yeah. Yeah, I  
14 was let go before that and I had -- by then -- because  
15 I always had good relations with my previous OB  
16 anesthesia practice, I continued doing locums with them  
17 and then slowly, you know, looked around, found a place  
18 in Elizabethtown and started my -- you know, eventually  
19 started my own practice in Elizabethtown doing  
20 interventional pain management.

21 Q What's the name of the practice that  
22 you -- the anesthesiology practice you just mentioned?

23 A The obstetric anesthesia or the private  
24 practice pain management that I started myself in  
25 Elizabethtown?

1 Q Not the one you started, the one that  
 2 you -- in between starting that one --  
 3 A Oh, Obstetric & Anesthesia Consultants,  
 4 OAC.  
 5 Q And that's the one you're still with?  
 6 A That's -- yeah. I still work there.  
 7 Yes.  
 8 Q So you've been with them from 2003?  
 9 A Exactly. And even when I was doing my  
 10 full-time private practice pain management in  
 11 Elizabethtown, I was still doing locums with them in OB  
 12 anesthesia. So I was still with them in sort of a  
 13 part-time capacity even then.  
 14 Q Let's turn to the practice you started.  
 15 When did you start that?  
 16 A I believe it was 2010, late 2010. I may  
 17 be mistaken on that, but I think it was late 2010.  
 18 Q What was the name of that practice?  
 19 A Avicenna Pain Relief.  
 20 Q How many doctors were a part of that  
 21 practice?  
 22 A Just me.  
 23 Q How long did you practice under  
 24 Avicenna?  
 25 A Up until 2014. And then I went back to

1 doing obstetric anesthesia full-time at the hospital.  
 2 Q And you mentioned it was located in  
 3 Elizabethtown, Kentucky?  
 4 A Yes. Yeah.  
 5 Q And this was a pain management practice?  
 6 A This was an interventional pain  
 7 management practice, yes.  
 8 Q Can you just briefly tell me what that  
 9 is?  
 10 A Well, interventional pain management is  
 11 basically -- it's a comprehensive pain management  
 12 solution for people that have, for example, herniated  
 13 discs or nerves that are -- you know, they have  
 14 chronically bad arthritis in their spine or anywhere in  
 15 the body they have chronic pain which is not treatable  
 16 by acute means, you know, something that's not expected  
 17 to go away within a month or two months.  
 18 If it hasn't gone away in about three  
 19 months, even with optimal management, then it's called  
 20 chronic pain. So then it needs to be managed on a  
 21 longer term basis. So if somebody has cancer pain,  
 22 somebody has chemotherapy-induced pain, somebody has  
 23 chronic arthritis of their spine that has caused, you  
 24 know, that's -- or they've had multiple surgeries of  
 25 their back and now the surgeon is no longer able to

1 manage anything, so then now they need to be on  
 2 something more, either medication-wise or their nerves  
 3 need to be burned or, you know, epidurals every six  
 4 months, or something, whatever it takes to keep them  
 5 comfortable.  
 6 Q So there -- it sounds like there's a  
 7 procedure part to it and there's also a prescribing  
 8 part to it?  
 9 A Correct. Both.  
 10 Q How many days a week was the practice  
 11 open?  
 12 A I was -- I would work -- it was open  
 13 every day, but I was there Monday through -- usually  
 14 Monday -- well, you know, it obviously changed over  
 15 the -- since 2010 to 2014. Initially, I started all  
 16 five days or less than five days and then eventually  
 17 moved up to all five days. Then I backed off and was  
 18 doing Monday, Tuesday, Wednesday, Thursday and so I  
 19 could work Friday, Saturdays at the hospital, so  
 20 something like that. So some combination of between  
 21 four days and -- you know, between four and five days  
 22 if you take an average of the total time I was there.  
 23 Q Do you have an estimate in the average  
 24 week of how many patients you would see while at  
 25 Avicenna?

1 A I would typically have no more than 20.  
 2 20, 25 maximum I think. No more than 25, if I remember  
 3 correctly.  
 4 Q And you did procedures as part of that  
 5 practice?  
 6 A I did procedures. I would usually have  
 7 a day that I would keep, you know, discreet for  
 8 procedures only. So for example, some day, you know,  
 9 maybe Thursday only or Wednesday only I would do  
 10 procedures, and then the other days I would see the  
 11 patients. And so evaluation and, you know,  
 12 non-interventional management of the patients on the  
 13 other days and then that one day was all of the  
 14 patients that I had seen and needed any kind of  
 15 procedure, those would be scheduled on that one day.  
 16 Q What types of procedures would you do?  
 17 A Typically epidurals, radio frequency,  
 18 ablations of the nerves, knee joint injections, you  
 19 know, hip joint injections, shoulder injections, but  
 20 mostly, epidurals and the radio frequency ablations,  
 21 sometimes spinal cord stimulators.  
 22 Sometimes intrathecal, which is pain  
 23 pumps for patients that have pain that cannot be  
 24 managed by oral means, or the doses are too high. So  
 25 you don't want them on those doses. So you implant

1 pain pumps into their spine so they get a -- it's like  
2 having a medication infusion directly into the spinal  
3 fluid, so trials for that. So that was basically kind  
4 of the usual run of patients.

5 Q And you also prescribed pain medication  
6 to patients?

7 A Correct.

8 Q What types of pain medication would you  
9 prescribe?

10 A All kinds. Hydrocodone, Oxycodone. And  
11 those were probably the most common and, of course, you  
12 know, combined with non-steroidals like Naproxen and  
13 Celebrex and those kinds of medications, muscle  
14 relaxers like Flexeril. And anti-depressants like  
15 tricyclic anti-depressants which are good for sleep.  
16 So those.

17 Q Was urine drug testing a part of that  
18 practice?

19 A Yes.

20 Q How does urine drug testing fit into a  
21 pain management practice?

22 A Well, it's important for -- obviously if  
23 you're going to give medication to patients, you have  
24 to make sure that they're compliant with the  
25 medication. So both from a safety standpoint, meaning

1 are the patients taking it and are they taking it and  
2 are they taking it like they're supposed to take it or  
3 are they, you know, taking too much or too little.

4 You know, so from that standpoint it's  
5 important to drug test. But also from a diversion  
6 standpoint, it's important to drug test them and make  
7 sure that they're not, you know, not taking what you're  
8 giving them or taking something else that you're not  
9 giving them. And so if they've taken, for example,  
10 they -- you know, if they came in positive for  
11 marijuana or something like that, then clearly, you  
12 know, we wouldn't write a prescription for them. So  
13 things like that.

14 So it's important to -- you know, both  
15 to ensure compliance but also to prevent diversion but  
16 also to, you know, keep them accountable. So for all  
17 of those reasons.

18 Q And let's go -- we'll get back to urine  
19 drug testing. I want to ask you a couple more  
20 questions just about the practice itself.

21 A Sure.

22 Q You mentioned you were a solo  
23 practitioner?

24 A Yeah.

25 Q Was anyone else employed by Avicenna?

1 A Just some front office staff and medical  
2 assistants.

3 Q Roughly how many employees did those  
4 constitute?

5 A Again, it varied over the years, but I  
6 would say probably there were at least two people at  
7 the front desk typically, one or two MAs. So typically  
8 there would be four -- I would say four people, four  
9 employees.

10 Q Is that just four employees in the  
11 office at any given time or kind of four employees  
12 total?

13 A Total, yeah. Four -- between four and  
14 five I would say is -- because at some point we may  
15 have had more than three MAs. But I think between four  
16 and five was a, you know, total number. And it wasn't  
17 obviously the same person. You know, we'd let go  
18 somebody and then hire somebody, let go somebody. So  
19 yeah.

20 Q But for -- generally, for the life of  
21 Avicenna, four to five staff?

22 A Yeah, somewhere around four to five,  
23 yes.

24 Q Okay. You didn't have a nurse  
25 practitioner there?

1 A No.

2 Q Physician assistant?

3 A No.

4 Q Did you employ Manoj Kumar there?

5 A Not as an employee. He was just a -- on  
6 a consultant basis. He would bill me just for --  
7 initially just for hours. And when we first started,  
8 he would just bill me by the hour but -- you know, I  
9 spent this much time managing. And so that's how he  
10 would bill.

11 Q So he was a 1099 independent contractor?

12 A Yeah, just basically.

13 Q Did Kumar help you start the business?

14 A Right. Yes. When I was starting, he  
15 would provide the input on how to get the practice  
16 started and, you know, what things we would need.  
17 Because he had already had the experience in southern  
18 Indiana and kind of, you know, gone through the same  
19 process. He was -- you know, because of the  
20 investigation of the boss, he had lost the job, and so  
21 he was looking around and trying to find different  
22 places to help out. So that's -- yeah, he did help.

23 Q So you knew him from the Indiana  
24 practice?

25 A Yeah.

1 Q And then you hired him as an independent  
2 contractor to help you start Avicenna?

3 A Correct. Yeah, just as a -- just as a  
4 consultant to help me start the practice, yeah.

5 Q And then we'll both try and do a better  
6 job of it, but let's try and not talk over each other  
7 just so we can have a clean video and record.

8 A Yes.

9 Q Thanks, Dr. Shah. What did Manoj Kumar  
10 do to help you start Avicenna?

11 A He -- I think we looked at the locations  
12 together, what would be a good place. Again, let me  
13 preface, you know, it's been such a long that I don't  
14 exactly recall what specific things he did.

15 But certainly in terms of the general --  
16 general principles, he -- you know, we went to  
17 locations together to see what would be a good  
18 location, you know, talked about -- eventually once we  
19 settled on a location, we talked to the landlord  
20 together. He helped, you know, with vetting the deal  
21 to see if it was a decent -- you know, the rent was  
22 okay or not okay.

23 And then eventually setting up, you  
24 know, the actual office because I had never set up an  
25 office. So I had zero idea about how to set up an

1 A I think it was about -- again, it was  
2 two levels, basement and top level. The basement is  
3 where I had like a small -- my own separate office area  
4 where I could keep my stuff. And then we had a break  
5 room and I would say probably 2,500 square feet or  
6 something like that. Again, I may be mistaken but I  
7 think about 2,500.

8 Q So I assume there was a receptionist  
9 area?

10 A Yeah.

11 Q And then I assume there were patient  
12 rooms where you saw patients?

13 A There were -- there were, yeah, three  
14 patient rooms. There were two patient rooms, one  
15 procedure room. There was a front office area, there  
16 was a waiting area, and there was a bathroom for the  
17 patients.

18 Q Was there a lab in that office?

19 A Lab? Well, initially we were just doing  
20 the urine -- you know, the point of care testing which  
21 is, you know, like a dipstick basically, which is a  
22 rapid test you do instantly when the patient comes.  
23 And then you dip the urine with -- you know, and you  
24 find out what it's positive for. There's multiple  
25 reagents on that.

1 office. So more things we would eventually need, you  
2 know, small nitty-gritty stuff like, okay, how many  
3 organizers do we need in the front office, you know,  
4 what kind of -- do we need five printers or two  
5 printers. So you know, things like that. Do we need a  
6 computer in each room and -- so things like that.

7 Q Did he help with purchasing medical  
8 equipment?

9 A With -- yes, with the imaging table and  
10 the C-arm and things like that.

11 Q What type of medical equipment did  
12 Avicenna have?

13 A We had the -- you know, basically you  
14 need something that every office has, which is  
15 computers to do your charting and things like that.  
16 But also, you need a dedicated fluoroscope, or a C-arm  
17 as it's called, which is an x-ray mobile -- like a  
18 mobile x-ray machine essentially. And you need an  
19 imaging table for that x-ray machine so you can  
20 visualize peoples' spine and back and joints and that  
21 kind of stuff. And then we had other, for example,  
22 radio frequency machines.

23 Q Physically, how big was the office? I'm  
24 just trying to get a picture of what the office space  
25 looked like.

1 And so the stick tells you if they're  
2 positive for, you know, something. And that's a -- you  
3 know, it's -- you don't make decisions based on that,  
4 like discharge versus no discharge decisions, but you  
5 do -- it gives you an instant idea of what to do. So  
6 that was the extent of -- initially when we started,  
7 that was the extent of the initial. And then once we  
8 did that, then the urine would go to a lab for  
9 confirmation testing.

10 Q And then did that change at a certain  
11 point in the practice?

12 A Yes. And at some point we started -- we  
13 decided to get a lab that would give us a little more  
14 detail in our own office.

15 Q Is that a desktop analyzer?

16 A Yeah.

17 Q Do you remember when that occurred?

18 A Not really. I don't exactly recall when  
19 it happened, but we had it for at least -- I would say  
20 at least two and a half. So if we started in 2010 and  
21 we closed in 2014, I would say maybe about two and a  
22 half, three years we had the analyzer. Two -- two and  
23 a half years, maybe two years, something like that.

24 Q Okay. So there was probably a year or  
25 two where you didn't have the analyzer?

1 then, say, pick out five people that -- and then he  
2 would, you know, give them a little mini test to take  
3 and make sure they were -- at least had decent  
4 processing capacity to be able to understand what was  
5 going on in the office. And then we would talk to them  
6 together.

7 Q Were there any employees that he  
8 interviewed alone?

9 A I don't believe so. I believe we  
10 talked to all of the people together.

11 Q So he would find the employees  
12 basically, review their resumes as kind of an initial  
13 review --

14 A Yeah.

15 Q -- and then you two would interview them  
16 together?

17 A Correct.

18 Q Anything else he did in terms of helping  
19 start Avicenna?

20 A I think help with the other supplies,  
21 for example, with let's say Medline or, you know, those  
22 companies that supply your needles and this and that  
23 and medication companies, you know, things -- for  
24 example, companies that sell contrast and things like  
25 that.

1 Q And you mentioned that he was paid  
2 hourly, correct?

3 A Yeah. For -- he would -- yeah, he would  
4 charge and say, okay, I've spent five hours at this  
5 time, six hours at this time. So yeah.

6 Q What was his hourly rate?

7 A I believe it was \$50.00.

8 Q Would he invoice you?

9 A Yes.

10 Q How often would he invoice you?

11 A It depended I guess on how much time he  
12 had put in. So I mean, if he just put in three hours,  
13 there was -- if there was a month he didn't have to do  
14 much, which was after the first few months of -- you  
15 know, once the practice was up -- initially, obviously  
16 he had to put in a lot more effort.

17 So once that was set up, then it was --  
18 you know, it would depend on how many hours. Sometimes  
19 if there were only two hours or three hours, he  
20 wouldn't, you know, send me a bill at that point. Then  
21 he would kind of lump it with the other payments.

22 Q Did Manoj Kumar have a title with  
23 Avicenna?

24 A Not really. Not a formal title as in --  
25 meaning it was understood that he was, you know,

1 managing the -- like a business manager. Yeah.

2 Q A business manager is --

3 A Business manager, yeah.

4 Q -- what you would call him? After the  
5 practice was up and running, did he manage the  
6 day-to-day operations?

7 A Right. I didn't want to get involved  
8 with hiring and firing of employees based on, you know,  
9 what this person said they did or that person said they  
10 did.

11 So I kind of routed all the staff  
12 complaints and staff things to him so they would  
13 communicate with him. And then if there was an issue  
14 that he could not -- or there was a bigger decision  
15 like actually firing somebody or things like that, or  
16 hiring somebody new, then he would say, hey, Dr. Shah,  
17 this is this, this is this. What do you want to do  
18 with this. Do you want just let go of this person and  
19 things like that.

20 Q So he managed the staff?

21 A Correct.

22 Q Did he continue to handle purchasing of  
23 equipment and supplies?

24 A If -- you know, and -- so when you --  
25 once you get the practice up and running in a couple of

1 years after starting, then you start to have -- then,  
2 you know, you get your own, you know, obviously  
3 connections and reps start showing up. And then you  
4 get relations with them, and you're like, okay, you  
5 know, what do you have, show me this, this, this.

6 And then -- so sometimes, you know, I  
7 guess it could go both ways. Sometimes I would point  
8 to him, hey, this company is making a cheaper tray with  
9 more product in it. There are better needles, better  
10 this. So let's switch over from them to this, so you  
11 know, things like that. So I guess -- Medline for  
12 example, things like that.

13 Q What about the actual purchasing? So  
14 let's say you were going to purchase from Medline. Who  
15 would handle that?

16 A I would -- I would pay for that the  
17 majority of the time directly to Medline because I know  
18 I paid Medline. You know, they were -- so I was paying  
19 them directly. But there were times that he had bought  
20 stuff because, you know, I have those invoices that he  
21 invoiced me for. For example, you know, he bought  
22 something, and then he would say, I bought, you know,  
23 X, Y and Z on this day and, you know ...

24 Q How were employees there paid?

25 A How as in ...

1 not paid by the insurance companies. So that was the  
2 discussion we had, and that's why we switched.

3 Q So Kumar was taking a percentage of the  
4 billing revenue, correct?

5 A As the -- again, I don't know legally  
6 what standing he had in that company. In other words,  
7 was it incorporated in his name or he was just a  
8 operating officer, I have no clue. But he's the one  
9 who brought that billing company to me, and he said,  
10 you know, we have offices in India and here and we can  
11 manage this. And so he was -- so to that extent, yes,  
12 his company was taking a percentage of the money, a  
13 billing company, you know, whatever the billing revenue  
14 was.

15 Q Fair enough. What -- do you know what  
16 percentage it was that his company was taking of the  
17 billing revenue?

18 A I feel like -- I feel like the Florida  
19 company was seven and a half or eight percent and Manoj  
20 was five percent. Again, I'm not 100 percent sure on  
21 that, but I feel like that's -- I think that was the  
22 calculation we made, was that it was seven and a half  
23 or eight or seven percent or something versus five  
24 percent.

25 Q So if Avicenna billed out, for example,

1 \$100,000.00 to patients and Manoj Kumar's billing  
2 company was handling that, they would take five percent  
3 of that 100,000 or \$5,000.00?

4 A I think it's not based on -- it's based  
5 on collections. In other words, not on how much you  
6 billed the insurance company. It's after you get back  
7 the collection. So if you ask the insurance company  
8 for 100,000, you may get 20,000, and so five percent of  
9 that 20,000 is what he would get.

10 Q So five percent of what's ultimately  
11 collected?

12 A Correct.

13 Q Who handled the accounts receivable at  
14 Avicenna?

15 A He handled all of that.

16 Q Did he have access to the company bank  
17 account?

18 A Yes.

19 Q Did he have signatory authority?

20 A No.

21 Q What was his access to the company bank  
22 account for?

23 A Just to see how much was coming in and  
24 if I wanted him to kind of access together and say,  
25 hey, can you look this up and see what is going on here

1 and things like that.

2 Q Was it just one bank account?

3 A Yes.

4 Q What bank was that with?

5 A Republic Bank.

6 Q Did Manoj Kumar manage Avicenna's  
7 practice for the entire time it was open?

8 A He did. I will say that at some  
9 point -- and I think I mentioned this in the initial  
10 testimony as well. At some point, and again, I do not  
11 recall when exactly, but at some point, he said that,  
12 you know, the hourly billing is -- because I'm not here  
13 that often anymore. Once the practice was up and  
14 running, he said, you know, just -- it's probably  
15 better if I not charge like a hourly consulting fee. I  
16 think he said -- he said, I'll charge you only if I do  
17 something that incurs a cost to me. I don't remember  
18 when exactly that was.

19 Q Do you have a ball park, like a year,  
20 two years, three years?

21 A I would say probably two years I would  
22 say is -- maybe a year and a half, two years, something  
23 like that.

24 Q But to be clear, the entire time he was  
25 managing the practice and you were paying him, correct?

1 A Yes. Whatever time he put in, he was  
2 paid. In fact, I still owe him some money. So ...

3 Q How much do you still owe him?

4 A I don't -- it's on -- there's an  
5 invoice. I have to pull it up, how much it is.

6 Q Do you have copies of the invoices he  
7 sent you?

8 A I should be able to pull up many of  
9 them, unless I paid and deleted some of them, the ones  
10 that I paid already, but I should have some, yes.

11 Q The ones that you do have, would you be  
12 willing to provide us with those?

13 A Sure.

14 MR. JOHNSON: I think we're about out of  
15 time. Let's take a break.

16 VIDEOGRAPHER: Okay. One second here,  
17 and we are going off the record. The time on the video  
18 monitor is 14:06, and we are ending back-up media unit  
19 one and continuing on original media unit one.

20 (A short break was taken.)

21 VIDEOGRAPHER: And we are back on the  
22 record. The time on the video monitor is 2:11 p.m.,  
23 and we are beginning of back-up media unit one and  
24 continuing on master media unit one.

25 Q Before we broke, you mentioned you still



1 owed some money to Manoj Kumar, correct?

2 A Yes.

3 Q Are you still in contact with him?

4 A Off and on.

5 Q Is that just in relation to the money

6 you owe him? Do you have any other type of, you know,

7 business, personal relationship with him?

8 A No business relationship. Just you

9 know, hi, hello. You know, he wishes me -- if there's

10 a festival, he'll wish me, you know, greetings and vice

11 versa.

12 Q I want to go back to the topic of

13 Kumar's payment for his business management services.

14 After he sent you an invoice, how is he then paid?

15 A By check.

16 Q Was it that consistent the whole time he

17 was the business manager for Avicenna?

18 A I believe so, yeah. I can't recall

19 paying by credit card or anything -- or anything like

20 that, meaning it was always either a physical check or

21 more a online -- using online banking, meaning I would

22 use my bank's online banking to send him a check.

23 Q Was that just through your bank? Was

24 that through the direct deposit system with the

25 employees?

1 A No. That was -- you know, if you write

2 a -- like you have a --

3 Q Sure.

4 A If you pay a utility through the bank,

5 if you add a payer, then you just send them a -- then

6 the bank sends them a check.

7 Q So he was being paid separately by

8 check, different from how the employees were being paid

9 through the payroll system?

10 A Correct.

11 Q And those were all directly from you?

12 A Correct.

13 MR. JOHNSON: I'm going to introduce

14 what has been marked as Government's Exhibit 1.

15 (Whereupon Government's Exhibit 1 was

16 marked for identification.)

17 THE WITNESS: Is this for me?

18 Q That's for you, Mr. Shah.

19 A Okay.

20 Q Do you recognize that?

21 A Yes.

22 Q What is it?

23 A It's a check for Manoj, 5,000. It says,

24 "Avicenna set-up fees".

25 Q Is that your handwriting on the check?

1 A Yes.

2 Q So you made this check out to --

3 A Yeah.

4 Q -- Manoj Kumar?

5 A Uh-huh. Yes.

6 Q We'll start clean. And the check's

7 dated December 29th, 2010?

8 A Yes.

9 Q So it's safe to say from at least

10 December of 2010, you were paying Manoj Kumar?

11 A Yes.

12 Q If you could turn to page three of this

13 exhibit, and this is a copy of a check to MK Land

14 Holdings, right?

15 A Yes.

16 Q Do you know what MK Land Holdings is?

17 A I think it's -- if I remember correctly,

18 it was a company that Manoj had, but I -- that's -- I

19 believe it was a company that Manoj had. I think

20 that's how he got -- I'm trying to remember if I ever

21 wrote a check to MK Land Holdings, meaning he asked me

22 to write a check to MK Land Holdings.

23 Because he was -- so there was the

24 billing company reimbursement that was -- that we -- I

25 would pay him, which was, you know, like a separate

1 charge. And then whatever else he did, that was a

2 separate, of course, you know, because that was related

3 to how much the billing collection had been.

4 And then if he had gone and, you know,

5 spent, you know, a weekend going and talking to the --

6 let's say the company that -- you know, whoever set up

7 the desktop analyzer or something like that. And then

8 if there were hotel fees or whatever it is that he was

9 charging, that was a separate check.

10 So I'm trying to remember, and I don't

11 exactly remember if I made out a check myself to MK

12 Land Holdings. I'm thinking that's why I feel like I

13 remember the name because I made out a check to that,

14 but I don't remember for sure.

15 Q And this check is from Avicenna Pain

16 Relief, LLC, right?

17 A Yes, yes. Yeah. So that would have

18 been -- yes. I'm sorry, yes.

19 Q Let's turn to the last page of this

20 exhibit.

21 A I was thrown off by who had written --

22 who signed it. Because I was like, who's that person,

23 I don't ... To ...

24 Q The very, very last.

25 A The very last.

1 Q This might help give you a little  
2 clarity.  
3 A Yes.  
4 Q So the last page is a copy of a check  
5 from Avicenna Pain Relief to Med Tech Healthcare  
6 Solutions.  
7 A And I was going to mention as in during  
8 the break, I looked it up and it -- his billing company  
9 was called MedTech Healthcare Solutions.  
10 Q So this is a copy of a check from  
11 Avicenna to Kumar's billing company, MedTech?  
12 A Correct.  
13 Q And it's dated March 10th, 2015?  
14 A Right.  
15 Q So safe to say that at least through  
16 March 10th, 2015, Avicenna was paying Kumar's billing  
17 company?  
18 A Yes. Although, we ceased operations. I  
19 went back to full-time hospital practice, if I remember  
20 correctly, in January of 2015. So this was essentially  
21 kind of the -- you know, the office was still open, and  
22 we were making sure that all of the patients were  
23 getting their charts and referrals back to their  
24 primary care doctors and things like that.  
25 This was a time, you know, that that

1 office was still open, but I wasn't -- after January,  
2 I'm nearly 100 percent certain that I did not see any  
3 patients after January 2015. But obviously, there were  
4 some, you know, leftover charges for whatever billing.  
5 And he wasn't -- he hadn't been paid in full at that  
6 point. You know, so like I said, you know, he -- that  
7 was being carried forward.  
8 Q Fair enough. And going back to the MK  
9 Land Holdings check on page three, does that help jog  
10 your memory as to what MK Land Holdings was?  
11 A Yes. Now it's clear that that was the  
12 non-billing company reimbursement that he would charge  
13 under. He would say, you know, just write a check to  
14 MK Land Holdings.  
15 Q So MK Land Holdings is a company that  
16 Kumar asked you to write checks out to?  
17 A Correct.  
18 Q And that was for his business management  
19 services for Avicenna's practice, correct?  
20 A Correct.  
21 Q Okay. Did he ever tell you why he  
22 wanted it made out to MK Land Holdings versus himself?  
23 A He didn't say. I didn't ask.  
24 Q I want to switch topics to you and talk  
25 with -- and talk with you about urine drug testing.

1 When you started Avicenna, which lab did you use for  
2 its urine drug testing?  
3 A I think we carried over PCLS,  
4 meaning -- because I had -- you know, awhile back I had  
5 stopped working with Tewari. You know, when we  
6 stopped -- my last association with Manoj was at  
7 Tewari's practice, and Tewari's practice had PCLS as  
8 their lab. So I was familiar with PCLS at Tewari's  
9 lab.  
10 So when we started Avicenna, we -- I  
11 believe we started with PCLS. I know we switched  
12 billing companies. I am almost certain we started with  
13 PCLS and continued with PCLS. Because it doesn't  
14 come -- I can't recall any other lab that we -- the  
15 name of any other lab that we were with before. So I'm  
16 pretty sure we started with PCLS.  
17 Q Did Kumar recommend PCLS to you?  
18 A Yeah, I mean, in the sense that I said,  
19 so what should we use, and he said, well, you know, we  
20 had seen PCLS reports. You know, they were detailed  
21 reports. When we were at Tewari's practice, it was  
22 comprehensive reporting and had easy access to their  
23 pharmacists and their lab. So it was easy to call up.  
24 And so at least it had been a decent  
25 experience for me. So when he suggested that, you

1 know, we go with PCLS, I felt like it was a decent  
2 choice. And to be really honest, I -- I'm not 100  
3 percent sure that he said, let's do PCLS. It may have  
4 been, you know, when we were talking, you know, that  
5 both of us were saying, hey, you know, what lab should  
6 we use, Quest, Labcorp, this, that, or, you know, PCLS.  
7 And it's possible it was a -- just a simple joint  
8 conversation. But certainly, he was aware of PCLS and  
9 I was aware of PCLS beforehand. And he had a prior  
10 relationship with them.  
11 Q Okay.  
12 A Sorry to interrupt. Yeah.  
13 Q Sure. So Kumar had a prior relationship  
14 with PCLS?  
15 A Again, what the nature of that  
16 relationship was, I'm not sure. Obviously, I don't  
17 know if he had -- if he knew them or didn't know them.  
18 But all I'm saying is, he was at Tewari's practice for  
19 a long time, and they had had PCLS for a long time. So  
20 he was already familiar with them for awhile, even  
21 before I joined Tewari's practice.  
22 Q When you started Avicenna, did you  
23 consider any other labs to use?  
24 A Not when we started. We started with  
25 PCLS and we stayed with them. Although, later on,

1 again, you get multiple offers from different companies  
2 coming, hey, you know -- Quest, the big -- you know,  
3 there's only a few big companies in the country  
4 obviously, Quest and Labcorp and these kinds of  
5 companies. So everybody comes and wants to expand  
6 their business. So they're ...

7 Q Did you yourself talk to anyone at PCLS  
8 before you signed up with them?

9 A No.

10 Q Did you see any marketing materials from  
11 them?

12 A No, not that I can recall at this point.

13 Q Did Manoj Kumar present any documents,  
14 materials related to PCLS before you signed up with  
15 them?

16 A I don't recall seeing anything that  
17 would -- that would constitute like data or anything  
18 like that. No, I don't remember anything like that.

19 Q Did anyone from PCLS come to you or your  
20 office to explain their services?

21 A I do not believe so, but I could be  
22 mistaken. But I don't believe so.

23 Q Did you talk to anyone other than Manoj  
24 Kumar about using PCLS?

25 A No.

1 Q And was Kumar the only person who you  
2 consulted with about which toxicology lab to use?

3 A Yes.

4 Q And after consulting with him, you  
5 decided to use PCLS for Avicenna's practice, correct?

6 MR. CAUDILL: Objection.

7 A Correct.

8 Q What can you tell me about PCLS's  
9 operations or their lab?

10 A I mean, nothing other than, you know, we  
11 sent them the samples, they did the reports, they sent  
12 us the reports and if we had a question, we would call  
13 them and ask their pharmacist. And that was it.

14 Q Who handled the communications with  
15 PCLS?

16 A Manoj did, other than clinical  
17 questions, of course, which anybody, I or my staff, you  
18 know, the medical assistants or nurses, or whoever,  
19 meaning the medical assistants or myself.

20 Q What would be an example of a clinical  
21 question?

22 A So for example, you know, if there -- if  
23 a patient's initial urine test shows -- shows a  
24 certain, you know -- let's say we did a desktop  
25 analyzer, and it showed high levels of the metabolite

1 of a certain drug. So for example, oxycodone gets  
2 metabolized to oxymorphone. If you saw a high level of  
3 oxymorphone and then it went to PCLS and the level  
4 was -- you know, either it was absent or something like  
5 that or it had been absent in the desktop analyzer and  
6 was present there, then we would call and ask, you  
7 know, is there something -- you know.

8 Or we were concerned that, you know,  
9 this is a patient we know intimately and she's an  
10 80-year-old lady who has -- you know, she's been on  
11 this medication for the last three years and has never  
12 had a, you know, failed drug test and all of a sudden  
13 she's positive for cocaine and this and this and this.  
14 So we would call and find out what could possibly be  
15 causing such a result. Is there any medication she  
16 could be taking that might give us that result. So  
17 those kinds of questions.

18 Q What were the type of questions that  
19 Manoj Kumar would handle with PCLS?

20 A For example, you know, PCLS set up an  
21 HLA bridge to be able to directly access the final  
22 confirmations instead of having to wait for them to fax  
23 the results to us, because that was taking time. And  
24 so that was delaying our clinical decision-making, you  
25 know, in certain instances.

1 So in order to make the process more  
2 seamless and be able to access it within the context of  
3 the electronic medical record system, you know, they  
4 set up an HLA bridge, which would essentially, you  
5 know, this software can talk to this software. They  
6 set up that. And so that was -- Manoj would, you know,  
7 handle all of that stuff.

8 Q Did your practice have a PCLS  
9 representative?

10 A No.

11 Q Did Kumar fill that role?

12 A Not as a representative, but they did  
13 at -- you know, when we were doing the initial -- not  
14 initial -- at some point in the -- in the couple of  
15 years that -- you know, that once we set up the PCLS  
16 and they were doing this HLA bridge and merging with  
17 the new EMR and things like, at some point, they did  
18 say that, you know, if you dedicate one of your staff  
19 to doing the drug testing and handling of the  
20 specimens, then that -- you know, whatever time they  
21 spend on our equipment doing all of the other stuff,  
22 then we'll pay for that time. And that was, you know,  
23 set up by -- you know, via in consultation with Manoj.

24 Q Let's unpack that and just make sure I  
25 understand that. So PCLS was paying one of your

1 Now, I don't know this for sure, but I  
2 believe at some point after that he told me that he had  
3 joined PCLS, or I noticed his email address as showing  
4 @PCLS or something like that. But I had some  
5 indication that he was, you know, with PCLS. And that  
6 was -- but I don't -- I can't coincide the exact  
7 timing, but at some point after he stopped being my  
8 consultant is when he did that.

9 Q Let me make sure I understand you  
10 correctly, Dr. Shah. Earlier you testified that he was  
11 your business manager throughout the entirety of  
12 Avicenna's operations, correct?

13 A Correct.

14 Q So you learned that Kumar was associated  
15 with PCLS in some capacity after Avicenna, you know,  
16 closed?

17 A No.

18 Q So at some point during Avicenna's  
19 operations, you learned that Kumar had an association  
20 with PCLS?

21 A Correct.

22 Q And to be clear, he was still operating  
23 as your business manager at the time?

24 A Right, except for the fact that  
25 initially, remember, he was an hourly basis, and then

1 Carolina. So and then he said, you know, I've taken up  
2 a position with PCLS.

3 Q So when Kumar explained to you that he  
4 was moving to North Carolina and the checks would have  
5 to go there, that's when he told you that he had a  
6 position with PCLS?

7 A I believe so. I could be mistaken, you  
8 know, in all honesty, but he may have told me earlier  
9 but I -- that's when I recall, you know, that he out  
10 and -- outrightly said that, you know, he was employed  
11 by or he had started with PCLS.

12 Q And did you continue sending checks to  
13 North Carolina after that?

14 A Yes.

15 Q Do you remember how many?

16 A I don't, but I'm sure there's a record  
17 invoice.

18 Q Do you remember how long that you were  
19 paying Kumar in North Carolina after he moved there for  
20 services with Avicenna?

21 A I don't exactly recall, but it was I'd  
22 say at least -- at least a year or so. And I think  
23 part of the confusion is because I -- you know, I owed  
24 him the money. So I kept sending him checks even  
25 afterwards.

1 he said, well, I'm just going to take -- you know,  
2 I'm -- depending on what kind of work I do, if I do  
3 something substantive, I'm going to charge you.  
4 Otherwise I'm not going to charge you.

5 Q But at that time you were still paying  
6 Kumar for services for Avicenna, correct?

7 A Yes. If he did any work, yes,  
8 absolutely. And for his billing company and for any  
9 other work that he would do, yes.

10 Q So you learned he was associated with  
11 PCLS you think through his email address changing?

12 A I don't recall him saying anything  
13 outrightly at -- initially. But at some point, and  
14 this may -- honest -- to be clear, this may have been  
15 after 2014 end. But at some point towards the end of  
16 that, you know, our tenure together, at some point  
17 there, he said I've taken up a position, you know, with  
18 PCLS and I'm moving to North Carolina and da, da, da,  
19 and you know, I'm no longer in Bloomington, I'm now in  
20 North Carolina.

21 And that's -- because the address on the  
22 checks had to change. So he said, well, you know, the  
23 checks, when you send them, they'll -- you'll have to  
24 send them to whatever, you know, High Point, or  
25 whatever that -- wherever he had moved in North

1 So some of those checks were even --  
2 even though we were no longer seeing patients, some of  
3 those checks were going after that. But it certainly  
4 was at some point towards the -- you know, maybe 2013,  
5 2014, somewhere around there, 2013, maybe late 2013 or  
6 something like that. But I could be wrong on that  
7 date.

8 Q When Avicenna closed, do you know  
9 roughly how much money you owed Kumar?

10 A I think probably close to -- I think it  
11 was 25 or 30. I was just looking that there was -- you  
12 know, in 2015, he had sent me an invoice for 23 for --  
13 I believe 23 for some billing -- or no, not 23 for  
14 billing. It was around 30,000 was what I owed him at  
15 that time.

16 Q Was that for his services as your  
17 business manager or for the billing?

18 A He broke it down. He would break it  
19 down by MedTech this much for, you know, and prior  
20 balance this much. So some of -- some of it was for  
21 MedTech, but the other was for his capacity as, you  
22 know, if he had gone somewhere, done something, bought  
23 something that -- you know, like if he bought contrast  
24 from the compounding company and, you know, brought it  
25 with him or something like that and it didn't arrive or

1 something like that. So he would -- you know, I would  
2 reimburse him for that.

3 Q So the roughly 30,000 you owed him at  
4 the end of Avicenna was for both his business manager  
5 services and for the MedTech billing?

6 A Correct.

7 Q When you started Avicenna, did you know  
8 whether Kumar had any association with PCLS?

9 A I did not.

10 Q When you chose PCLS as the lab that you  
11 were going to use for urine drug samples, did you know  
12 if Kumar had any type of employment relationship with  
13 PCLS?

14 A I didn't.

15 Q So he never disclosed to you whether he  
16 did or did not have an employment relationship with  
17 PCLS when you consulted him about the decision to use  
18 PCLS for urine drug samples?

19 MR. CAUDILL: Objection. You can  
20 answer.

21 A Correct.

22 MR. JOHNSON: I'm going to show you  
23 what's been marked as Government's Exhibit 4.

24 (Whereupon Government's Exhibit 4 was  
25 marked for identification.)

1 Q Do you recognize this document, Dr.  
2 Shah?

3 A Yes.

4 Q What is it?

5 A It's a -- this is basically as a  
6 consultant and -- basically, you know, detailing what  
7 he's doing and no direct or indirect influence or say  
8 in the samples and patients, meaning how -- you know,  
9 who is going to be tested or not tested and how many  
10 are going to be tested or sent to a lab.

11 Q Okay. Let's back up. It's a document  
12 entitled Statement, correct?

13 A Yes.

14 Q Did you prepare this Statement?

15 A I don't recall preparing it.

16 Q Do you know if Manoj Kumar prepared it?

17 A That's my memory, but I -- I do not  
18 recall making this print, you know, statement out  
19 myself. That's all I can say, which means that most  
20 likely he made it and then -- yeah.

21 Q So you don't remember drafting this?

22 A I don't.

23 Q Do you know why you would have drafted  
24 it?

25 A Why I would have drafted it or he

1 would have --

2 Q I'll ask you a better question. Can you  
3 think of a reason why you would have drafted a  
4 statement like this?

5 A I can't.

6 Q Do you remember discussing this  
7 statement with Manoj Kumar?

8 A No, not really. I don't -- I don't  
9 recall any big discussions about it.

10 Q Is that your signature on it?

11 A Yes.

12 Q Do you remember signing it?

13 A Yes, meaning I don't remember signing  
14 but that is my signature. It looks like my signature I  
15 think.

16 Q So that's your signature but you don't  
17 remember signing it?

18 A Correct.

19 Q You don't remember discussing the  
20 contents of this statement with Kumar?

21 A Honestly, I don't.

22 Q I want to turn your attention to the  
23 last line of the first paragraph. "He," meaning Kumar,  
24 "is paid \$200.00 every month for this assistance,"  
25 referencing his business management --

1 A Sure.

2 Q -- services, correct?

3 A Yes.

4 Q Is that sentence accurate?

5 A That -- this may have been -- that's  
6 what I was looking at. So I'm thinking the change  
7 from -- remember, I was saying that he -- at some point  
8 he changed from an hourly to, okay, I'm going to do  
9 some work every month and you do -- but if I do  
10 something, then I'm going to charge you for that.

11 I'm thinking this is around that time,  
12 meaning after we had had the initial \$50.00 an hour  
13 thing, and he said, well, I'm not going to charge you  
14 an hourly fee anymore. I'm just going to charge you --  
15 so I feel like that is what he had said okay that, you  
16 know, just pay me \$200.00 every month or whatever, you  
17 know, and then I'll do -- if it's more than that, I do  
18 more work, I'll charge you more for that. But let's  
19 just keep it like this since I'm not here, you know,  
20 doing that much work.

21 Q So you believe at a certain point you  
22 went to a flat fee system with Kumar?

23 A Correct, something like that.

24 Q And that would be a minimum flat fee?

25 A Yes.

1 A The only thing I can recall is there was  
2 a computer that was used to -- I don't know whether it  
3 was a server or a computer or something, some kind of,  
4 you know, like a computer-type device that was used  
5 with the software to be able to access the reports.

6 Q Do you know if Kumar managed any other  
7 doctors' practices during the same time period he was  
8 managing yours?

9 A I know he was managing some in southern  
10 Indiana.

11 Q Do you know what practice that was?

12 A The reason I know is because it was my  
13 other colleague from Tewari's practice, Dr. Masimore.  
14 So his practice was also being managed by Manoj, as far  
15 as I know.

16 Q Is that -- was that something that Dr.  
17 Masimore told you?

18 A Yeah. I mean, again, I don't recall  
19 like a discussion saying, okay, you know, yes, he  
20 manages my practice. But when we -- Greg and I would  
21 talk, would say, yeah, Manoj told me to do this and  
22 we're going to -- you know, I think he suggested this,  
23 and I'm going to do this. And so to that extent, yes,  
24 I believe he was.

25 Q Have you ever met Philip McHugh?

1 MR. JOHNSON: I'll pass the witness.

2

3 CROSS EXAMINATION BY MR. CAUDILL:

4 Q Dr. Shah, my name is Bo Caudill. We met  
5 off the record. I represent Philip McHugh. I believe  
6 you testified you don't remember meeting Philip McHugh  
7 at any point, is that right?

8 A I did.

9 Q Dr. Shah, before we went on the record  
10 this afternoon, I asked you where you had come from for  
11 today's deposition. What have you done today?

12 A I was working at the hospital taking  
13 care of a lady who almost died. So gave her like 40  
14 units of blood. So that's what I was doing all night.

15 Q And when did you start your shift at the  
16 hospital?

17 A 7:00 a.m. yesterday morning.

18 Q Wow. And when did it end?

19 A This morning at 7:00.

20 Q Was it a busy shift?

21 A Very.

22 Q Are they usually pretty busy?

23 A Yes, pretty, at one of the hospitals  
24 where we work in the -- yes, it's pretty busy. Last  
25 night was unusually busy because of this lady who

1 A Not that I know of.

2 Q Do you know who he is?

3 A No.

4 Q So you've never spoken to him,  
5 corresponded with him, anything like that?

6 A Unless it was some document like this  
7 where -- you know, like that paper -- like this paper  
8 that had his signature or -- I don't recall as far as I  
9 can remember.

10 Q Do you know Doug Smith?

11 A No.

12 Q Same questions, never talked to him,  
13 corresponded with him, anything like that?

14 A As far as I can remember, no.

15 MR. JOHNSON: Let's take five. I might  
16 be about done.

17 VIDEOGRAPHER: The time is now 2:05 --  
18 I'm sorry, 3:05, and we are going off the record. And  
19 this will be end of back-up media unit two and  
20 continuation of master media unit one.

21 (A short break was taken.)

22 VIDEOGRAPHER: And the time is now 3:11  
23 p.m. on the video monitor, and we are back on the  
24 record. This is beginning of back-up media unit three  
25 and continuation of master media unit one.

1 almost died from this bleeding but ...

2 Q I think you testified that you did your  
3 medical school in India?

4 A Yes.

5 Q And that you came to the United States  
6 in 1998?

7 A Yes.

8 Q Why did you come to the United States?

9 A All of the -- you know, this is the  
10 place where all of your people that you read books of,  
11 they are the people that are actually working here. So  
12 everybody aspires to be working with them. So all of  
13 the -- and in my case actually, you know, the dean of  
14 the medical school at that time was -- was Dr. Kaplan,  
15 who's the guy who's written the big book on cardiac  
16 anesthesia.

17 So we had read his books, and so he was  
18 the dean. And same thing with the -- you know, you  
19 with the research head at University of Louisville. It  
20 was Dan Sessler. He's a big -- you know, he's written  
21 multiple books and chapters and things like that. So  
22 you get opportunities to work with them. So that's  
23 obviously a great draw.

24 Q And after you had those opportunities to  
25 work with them, what -- what made you decide to stay in

1 MR. CAUDILL: I don't have anything  
2 further for you either, Dr. Shah. Thanks again for  
3 your time today.

4 VIDEOGRAPHER: And the time is now 3:45  
5 on the video monitor. This concludes all media units  
6 and concludes the deposition.

7 \* \* \* \* \*

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1 C E R T I F I C A T E

2

3 STATE OF KENTUCKY )

4 COUNTY OF JEFFERSON )

5 I, DENISE L. CLINE, a notary public within  
6 and for the State at Large aforesaid, do hereby certify  
7 that the foregoing is a true, correct and complete  
8 transcript of the deposition of YUNUS SHAH, M.D., taken  
9 at the time and place and for the purpose set out in  
10 the caption hereof; that said deposition was taken down  
11 by me in stenotypy and afterwards transcribed on a  
12 computer under my direction; that the appearances were  
13 as set out in the caption hereof; and that it was not  
14 requested that the deposition be submitted to the  
15 witness for reading and signature.

16 Given under my hand as notary aforesaid, this  
17 the 21st day of August, 2020.

18 My commission expires: October 7, 2023

19

20

21 /S/ DENISE L. CLINE

22

23 DENISE L. CLINE, Notary ID 631507

24 Court Reporter and Notary Public

25

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL FILE NO. 3:17-CV-37  
(CONSOLIDATED WITH  
CIVIL FILE NO. 3:17-CV-46)

UNITED STATES OF AMERICA ex rel,  
TARYN HARTNETT and DANA SHOCHED,  
Plaintiffs,  
v.  
PHYSICIANS CHOICE LABORATORY  
SERVICES, DOUGLAS SMITH,  
PHILIP MCHUGH AND MANOJ KUMAR,  
Defendants.

Via Zoom  
Monday, September 14, 2020  
9:42 a.m. - 2:08 p.m.

VIDEOTAPED DEPOSITION OF MARCUS SOWINSKI

Taken before Mary Ann Collier, a Court Reporter  
and Notary Public for the State of Florida at Large,  
pursuant to Notice of Taking Deposition filed in the  
above cause.

1 THE VIDEOGRAPHER: In the case styled United  
2 States of America, ex rel, versus Physicians  
3 Choice Laboratory Services, et al., Civil File  
4 Number 3:17-CV-37, consolidated with 3:17-CV-46,  
5 this is the videotaped deposition of Marcus  
6 Sowinski. This deposition is taking place via  
7 Zoom on September 14th, 2020. The time is now  
8 9:42 a.m. our videographer is Oliver Lee.  
9 Counsel will state your appearances for the  
10 record, after which our court reporter, Mary Ann  
11 Collier, will then swear in the witness.  
12 MS. ARMSTRONG: Katherine Armstrong,  
13 Assistant U.S. Attorney, on behalf of the United  
14 States.  
15 MR. VILLMER: Matt Villmer with Weaver,  
16 Bennett and Bland, here on behalf of Defendant  
17 Phil McHugh.  
18 MR. CAUDILL: Bo Caudill on behalf of  
19 Defendant Philip McHugh.  
20 MR. IRVING: Brian Irving from Bass, Berry  
21 and Sims on behalf of witness, Marcus Sowinski.  
22 Thereupon,  
23 MARCUS SOWINSKI  
24 was called as a witness and, having been duly sworn,  
25 testified as follows:

1 APPEARANCES: (Via Zoom)  
2 KATHERINE T. ARMSTRONG, AUSA  
3 Suite 1650, Carillon Building  
4 227 West Trade Street  
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8 On behalf of Plaintiff USA  
9 MATTHEW VILLMER, ESQ.  
10 BO CAUDILL, ESQ.  
11 Weaver, Bennett & Bland  
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14 704-844-1400  
15 mvillmer@wbbatty.com  
16 On behalf of Defendant McHugh

17 BRIAN F. IRVING, ESQ.  
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21 615-742-6200  
22 birving@bassberry.com  
23 On behalf of the deponent

ALSO PRESENT:

15 PHILIP MCHUGH  
16 CATHLEEN HOLLOWELL  
17 OLIVER LEE, Videographer

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21 MR. VILLMER 96

22 EXHIBITS  
23 FOR PLAINTIFFS FOR I.D.  
24 No. 1 87  
25

1 DIRECT EXAMINATION  
2 BY MS. ARMSTRONG:  
3 Q. Mr. Sowinski, thank you very much for making  
4 the arrangements to be here with us today via Zoom.  
5 These are certainly different times and we appreciate  
6 your patience with us, and particularly me and my  
7 inability to do anything on a computer.  
8 So thank you and just bear with me. If for  
9 some reason you can't hear me or something fails in  
10 the technology on your end, please let us know. Okay?  
11 A. Sure.  
12 Q. Great. So you are here today pursuant to a  
13 notice of deposition and consent. Is that correct?  
14 A. Yes.  
15 Q. Great. Have you ever had your deposition  
16 taken before? And by deposition I mean giving a --  
17 giving a statement under oath in front of a court  
18 reporter or a videographer?  
19 A. Yes.  
20 Q. Okay. When was that?  
21 A. Many years ago. I don't remember.  
22 Q. Okay. Well since it's been a little while,  
23 I'll just kind of go through some of the basic  
24 housekeeping issues with you, if that's all right.  
25 A. Okay.



<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. Tell us just a little bit about that.</p> <p>2 Are there different types of urine drug testing?</p> <p>3 A. Yes.</p> <p>4 Q. What are those?</p> <p>5 A. Drug screening, drug confirmations.</p> <p>6 Q. What is drug screening?</p> <p>7 A. It tests qualitative, positive or negative,</p> <p>8 if a substance is present in a patient's system.</p> <p>9 Q. And what is drug confirmation testing?</p> <p>10 A. Quantitative testing to determine the level</p> <p>11 of a specific drug in a patient's system.</p> <p>12 Q. Okay. Did PCLS offer both qualitative and</p> <p>13 quantitative drug testing?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. What specifically product did PCLS</p> <p>16 offer? Was it a certain test or a number of urine</p> <p>17 drug tests?</p> <p>18 A. A variety of urine drug tests and saliva drug</p> <p>19 tests.</p> <p>20 Q. And do you recall while you were there how</p> <p>21 many different drug tests were offered?</p> <p>22 A. I believe it changed over time. I don't know</p> <p>23 the exact number of tests.</p> <p>24 Q. What year -- I'm sorry -- I think you</p> <p>25 mentioned you left PCDS in 2009 and joined PCLS. Did</p>	<p style="text-align: right;">Page 15</p> <p>1 how to do that job at PCLS?</p> <p>2 A. I learned as I went, but I was familiar with</p> <p>3 information systems in general.</p> <p>4 Q. When you joined the company you mentioned you</p> <p>5 joined as an owner as well. Is that correct?</p> <p>6 A. I'm sorry. I didn't hear your question.</p> <p>7 Q. You mentioned when you joined the company you</p> <p>8 also joined as an owner. Is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did you have to put in any type of</p> <p>11 contribution equity into the company?</p> <p>12 A. My time and experience.</p> <p>13 Q. When you joined PCLS in 2009, who were the</p> <p>14 other owners of the company?</p> <p>15 A. Doug Smith, Philip McHugh.</p> <p>16 Q. Just the three of you in 2009?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Did you know if Mr. Smith put in any</p> <p>19 type of equity or contribution when he became an owner</p> <p>20 of PCLS?</p> <p>21 A. He was investing money to fund the company.</p> <p>22 Q. And in 2009 when you joined, what was</p> <p>23 Mr. Smith's job title?</p> <p>24 A. Owner.</p> <p>25 Q. And what was his role at that time in 2009?</p>
<p style="text-align: right;">Page 14</p> <p>1 you join PCLS in 2009?</p> <p>2 A. If I recall correctly, I believe so.</p> <p>3 Q. Do you remember what month?</p> <p>4 A. No.</p> <p>5 Q. I know I'm asking you to go far back here. I</p> <p>6 appreciate you trying your best to recall things. I</p> <p>7 should have mentioned this earlier. If I ask you</p> <p>8 something and you don't recall the answer, please tell</p> <p>9 us you don't recall. I certainly don't want you to</p> <p>10 guess. Is that okay?</p> <p>11 A. Okay.</p> <p>12 Q. Great. Okay. So you joined PCLS sometime in</p> <p>13 2009. What was your role when you joined the company?</p> <p>14 A. Chief operating officer.</p> <p>15 Q. And tell us what that role entailed.</p> <p>16 A. I was charged with setting up the laboratory</p> <p>17 information system responsible for processing samples.</p> <p>18 Q. Okay. And have you had prior experience</p> <p>19 doing that before you joined PCLS?</p> <p>20 A. I don't understand your question.</p> <p>21 Q. Sure. Have you had prior experience setting</p> <p>22 up lab information systems for the collection of</p> <p>23 samples?</p> <p>24 A. No.</p> <p>25 Q. Okay. And how did you get training or learn</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Investor.</p> <p>2 Q. Did Mr. Smith in 2009 or any time after play</p> <p>3 an active role in the company?</p> <p>4 A. No.</p> <p>5 Q. In 2009 what was Mr. McHugh's title?</p> <p>6 A. CEO.</p> <p>7 Q. And what do you recall was Mr. McHugh</p> <p>8 responsible for back in 2009?</p> <p>9 A. Day-to-day operations, sales, administrative</p> <p>10 duties.</p> <p>11 Q. Did Mr. McHugh's title ever change while you</p> <p>12 were at PCLS?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. When was that?</p> <p>15 A. When Joe Weigel joined the company.</p> <p>16 Q. Do you recall approximately when that was?</p> <p>17 A. I do not.</p> <p>18 Q. How long were you with PCLS?</p> <p>19 A. I resigned from management in 2013, but I</p> <p>20 remained an owner until the company was sold.</p> <p>21 Q. When you started with the company in 2009,</p> <p>22 did you report to anybody?</p> <p>23 A. To Phil McHugh.</p> <p>24 Q. Okay. And how were you compensated when you</p> <p>25 joined PCLS, were you on a salary or did you receive</p>

4 (Pages 13 to 16)

<p style="text-align: right;">Page 17</p> <p>1 another form of compensation?</p> <p>2 A. Initially, ownership equity.</p> <p>3 Q. And did that change?</p> <p>4 A. Yes.</p> <p>5 Q. When and how did that change?</p> <p>6 A. I don't recall when exactly that changed. It</p> <p>7 was around the time the company became profitable I</p> <p>8 started to receive a salary.</p> <p>9 Q. Do you recall what year that would have been?</p> <p>10 A. No.</p> <p>11 Q. Okay. When you started in 2009, other than</p> <p>12 your two co-owners, Mr. Smith and Mr. McHugh, were</p> <p>13 there any other individuals who were working in the</p> <p>14 company?</p> <p>15 A. Working did you say?</p> <p>16 Q. Yes.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. About how many people were employed by</p> <p>19 PCLS when you joined?</p> <p>20 A. Three to five.</p> <p>21 Q. Okay. And do you recall what capacity those</p> <p>22 three to five people were employed in?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. How were they employed?</p> <p>25 A. As employees.</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. And, again, because this may be played for a</p> <p>2 judge or a jury, people who are not as familiar with</p> <p>3 the lab space as you are, what is CLIA?</p> <p>4 A. Clinical Laboratory Improvement Act. It's</p> <p>5 the regulatory agency that licenses and governs</p> <p>6 clinical laboratories.</p> <p>7 Q. Who did Dinah Myers report to when she joined</p> <p>8 the company in 2009?</p> <p>9 A. Phil McHugh.</p> <p>10 Q. Okay. As part of Mr. McHugh's role as CEO in</p> <p>11 2009, he was also over quality and compliance. Is</p> <p>12 that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Other than Ms. Myers, was there anyone else</p> <p>15 on or in the compliance group at PCLS?</p> <p>16 A. Yes.</p> <p>17 Q. Who else?</p> <p>18 A. Me.</p> <p>19 Q. Okay. So compliance was part of your role as</p> <p>20 well?</p> <p>21 A. I grew into that role.</p> <p>22 Q. Okay. Was that something you had previous</p> <p>23 job experience with or is it something you learned as</p> <p>24 you went along?</p> <p>25 A. I learned as I went along.</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. What was their role or function at the</p> <p>2 company?</p> <p>3 A. Which person?</p> <p>4 Q. Do you recall the names of the three to five</p> <p>5 employees? We can start there.</p> <p>6 A. A few of the names I recall.</p> <p>7 Q. Okay. Tell us who you recall by name.</p> <p>8 A. Dinah Myers.</p> <p>9 Q. Okay. Who else?</p> <p>10 A. Mark Ross. Katie. I don't recall her last</p> <p>11 name.</p> <p>12 Q. Sorry. I cut you off there. Did you say</p> <p>13 Katie?</p> <p>14 A. Katie. I don't recall her last name.</p> <p>15 Q. Okay. Do you recall anyone else?</p> <p>16 A. There was a scientist. I don't recall her</p> <p>17 name. And we had a consultant, Joe Eagle.</p> <p>18 Q. What was Dinah Myers' role in the company?</p> <p>19 A. Quality and compliance for the laboratory.</p> <p>20 Q. Okay. Tell us what you mean by both quality</p> <p>21 and compliance for the laboratory.</p> <p>22 A. Setting up the testing and quality assurance</p> <p>23 programs required by CLIA and state and regulatory</p> <p>24 requirements and federal regulatory requirements for</p> <p>25 compliance.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Okay. When do you recall your role</p> <p>2 transitioning into compliance?</p> <p>3 A. As I started to learn more about the</p> <p>4 requirements for the laboratory and started to</p> <p>5 research more on what was required for our information</p> <p>6 system, I started to learn more about compliance.</p> <p>7 Q. Was this within the first year or so you were</p> <p>8 at the company or do you think that happened later?</p> <p>9 A. Yes, within the first year.</p> <p>10 Q. Okay. Did you have any formal training in</p> <p>11 compliance at any point in your career?</p> <p>12 A. No.</p> <p>13 Q. Did PCLS do any in-house compliance or</p> <p>14 regulatory training while you were there?</p> <p>15 A. Yes.</p> <p>16 Q. Tell me about that.</p> <p>17 A. We had online compliance training.</p> <p>18 Q. What did that involve?</p> <p>19 A. It was a website provided by CodeMap that</p> <p>20 allowed employees to log in and complete various</p> <p>21 modules related to compliance in various areas of</p> <p>22 laboratory business.</p> <p>23 Q. Do you recall any of those areas?</p> <p>24 A. Billing, antikickback, STARK, fraudulent</p> <p>25 claims, laboratory compliance basics.</p>

5 (Pages 17 to 20)

<p style="text-align: right;">Page 33</p> <p>1 which is something we're obviously going to have to</p> <p>2 work through.</p> <p>3 So without getting into that, ultimately,</p> <p>4 what would you tell your sales reps about whether or</p> <p>5 not PCLS could provide point of care testing cups to</p> <p>6 physicians?</p> <p>7 A. The code of federal regulation states that a</p> <p>8 laboratory can only provide supplies used solely for</p> <p>9 collection, transportation and storage.</p> <p>10 Q. Was the answer to sales reps, no, we cannot</p> <p>11 provide point of care testing cups for physician's</p> <p>12 use?</p> <p>13 A. Yes.</p> <p>14 Q. And was the question whether PCLS could</p> <p>15 provide them free of charge or whether PCLS could</p> <p>16 provide them and then charge the physician?</p> <p>17 A. Both.</p> <p>18 Q. Both. Okay. And the answer to both</p> <p>19 questions that you gave was no. Is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. To your knowledge, did PCLS ever provide free</p> <p>22 point of care testing cups to physician practices?</p> <p>23 A. Not to my knowledge.</p> <p>24 Q. You also mentioned the analyzer. Tell us</p> <p>25 what an analyzer is and what it's used for.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. You can answer.</p> <p>2 A. Should I answer?</p> <p>3 MS. ARMSTRONG: Yes.</p> <p>4 MR. IRVING: You can answer after an</p> <p>5 objection.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 BY MS. ARMSTRONG:</p> <p>8 Q. Do you know anything about the reimbursement</p> <p>9 for point of care testing?</p> <p>10 A. Yes.</p> <p>11 Q. Tell us what you know about that.</p> <p>12 A. I'm familiar with a CPT code that we used, or</p> <p>13 the difference between CPT codes we should use and we</p> <p>14 shouldn't use.</p> <p>15 Q. Okay. Let me back up a step. So PCLS used</p> <p>16 analyzer equipment in the lab. Is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And there is a CPT code you said you</p> <p>19 should use and one that you should not use. Can you</p> <p>20 talk us through that, please.</p> <p>21 A. Originally, there was a CPT code 80101 used</p> <p>22 for drug screening. But at some point in time I</p> <p>23 believe it was Medicare, the AMA, that changed the</p> <p>24 coding and came out with a different code for the use</p> <p>25 of point of care cup versus instrument analysis, like</p>
<p style="text-align: right;">Page 34</p> <p>1 A. Enzyme immunoassay instrument used for urine</p> <p>2 drug screening quality testing.</p> <p>3 Q. Where could an analyzer be used?</p> <p>4 A. In a laboratory setting.</p> <p>5 Q. It's a piece of lab equipment?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Could it also be used in any</p> <p>8 physician's office?</p> <p>9 A. Yes.</p> <p>10 Q. What is the difference between using an</p> <p>11 analyzer to test a sample versus a point of care</p> <p>12 testing cup?</p> <p>13 A. I don't know the scientific difference.</p> <p>14 Q. Okay. But ultimately they both of give you</p> <p>15 qualitative results?</p> <p>16 A. Yes.</p> <p>17 Q. Positive or negative for the presence of</p> <p>18 drugs?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know if there are any benefits to the</p> <p>21 physician in using an analyzer instead of a point of</p> <p>22 care testing cup?</p> <p>23 MR. VILLMER: Objection. Leading. You can</p> <p>24 answer.</p> <p>25 BY MS. ARMSTRONG:</p>	<p style="text-align: right;">Page 36</p> <p>1 an analyzer. Those codes were GO 431 and GO 434. GO</p> <p>2 431 for the use of an analyzer.</p> <p>3 Q. You mentioned a change in reimbursement, if I</p> <p>4 understood you correctly. At some point prior to that</p> <p>5 change do you know how physicians were being</p> <p>6 reimbursed for point of care testing cups?</p> <p>7 A. They were billing 80101.</p> <p>8 Q. Were they billing for each -- or were they</p> <p>9 able to bill for each substance tested for in the</p> <p>10 point of care testing cup?</p> <p>11 A. Yes.</p> <p>12 Q. And then I think you mentioned at some point</p> <p>13 that changed?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And what was the practical effect, if</p> <p>16 you know, of that change --</p> <p>17 (Technical difficulties.)</p> <p>18 Q. I think the question was what was the</p> <p>19 practical effect of the regulatory change to how a</p> <p>20 physician could bill for points of care testing using</p> <p>21 GO 101? And your answer again?</p> <p>22 A. I don't believe you said the right CPT code.</p> <p>23 Q. I didn't say the right CPT code. What CPT</p> <p>24 code should that have been?</p> <p>25 A. I'm not sure which test you're referring to.</p>

1 Q. So we're talking about the point of care  
 2 testing cups prior to the change in billing  
 3 requirement.  
 4 A. Okay. Originally, I believe the code was  
 5 80101. And after the change, the code for a cup was  
 6 GO 434.  
 7 Q. Okay. And in terms of the practical effect  
 8 of that change, did it affect the amount of money a  
 9 physician could be reimbursed for using a point of  
 10 care testing cup?  
 11 A. Yes.  
 12 Q. Okay. Did it increase the amount they could  
 13 be paid? Did it decrease the amount they could be  
 14 paid?  
 15 A. Decrease.  
 16 Q. Decrease. Okay. Do you know the amount or  
 17 the significance of the decrease?  
 18 A. I believe the allowable amount for GO 434 at  
 19 the time was \$20.  
 20 Q. And prior to the use of GO 434 when  
 21 physicians were able to bill under 80101 -- do I have  
 22 that right?  
 23 A. Yes.  
 24 Q. -- what was the reimbursement like under that  
 25 prior model?

1 A. I don't know.  
 2 Q. Okay. More than \$20?  
 3 MR. VILLMER: Objection. Leading.  
 4 BY MS. ARMSTRONG:  
 5 Q. If you know.  
 6 A. Probably more.  
 7 Q. You mentioned sale reps would come to you  
 8 with questions about analyzers. What types of  
 9 questions about analyzers did sales reps have for you  
 10 in your compliance capacity?  
 11 A. Could the company provide a physician with an  
 12 analyzer.  
 13 Q. And what was your answer to that question at  
 14 the time?  
 15 A. We need to discuss it with our attorney.  
 16 Q. And, again, not going into anything you  
 17 discussed with your attorney, what did you ultimately  
 18 tell the sales team about whether or not PCLS could  
 19 provide physicians with analyzer equipment?  
 20 A. PCLS is in the business of laboratory, not in  
 21 the business of providing analyzers.  
 22 Q. Were the sales reps asking you if PCLS could  
 23 provide physicians with analyzer equipment free of  
 24 charge?  
 25 MR. VILLMER: Objection. Leading.

1 A. I don't know. I don't remember.  
 2 Q. As compliance director, would it concern you  
 3 if you learned the company was providing physician  
 4 practices with analyzer equipment free of charge?  
 5 MR. VILLMER: Objection to form.  
 6 A. I'm not sure I understand the question.  
 7 Q. Sure. In your role as compliance director --  
 8 A. I was not the compliance director.  
 9 Q. Who was head of compliance?  
 10 A. Dinah Myers.  
 11 Q. I thought Dinah Myers reported to you on  
 12 compliance issues.  
 13 A. As in administrative day-to-day operations,  
 14 yes. But our compliance officer ultimately reported  
 15 directly to the board of directors per the OIG  
 16 guidelines.  
 17 Q. So let me make sure I understand that. So  
 18 Dinah was the head of the compliance group. Is that  
 19 correct?  
 20 A. Yes.  
 21 Q. And she ultimately reported to the board of  
 22 directors.  
 23 A. Yes.  
 24 Q. But sometimes she also reported to you for  
 25 various things. Correct?

1 A. Day-to-day administrative performance  
 2 evaluations, days off, vacations, weekends, questions,  
 3 we did work together. She did report to me. But she  
 4 also, under our org chart, she also reported directly  
 5 to the board of directors.  
 6 Q. Getting back to the analyzer issue, I think  
 7 you told us that sales reps would come to you with  
 8 questions about the provision of analyzer. Were you  
 9 the person who was charged with answering those  
 10 questions or was that somebody else?  
 11 MR. VILLMER: Objection. Mischaracterizes  
 12 previous testimony, but you can answer.  
 13 BY MS. ARMSTRONG:  
 14 Q. Did that mischaracterize your previous  
 15 testimony?  
 16 A. I'm not sure I understand the question. Or  
 17 if you could repeat the question.  
 18 Q. Of course. You told us earlier that as part  
 19 of your day-to-day compliance role sales reps would  
 20 ask you questions and those would include questions  
 21 about analyzers. Is that correct?  
 22 A. Yes.  
 23 Q. And then we talked more and you specified  
 24 sales reps would come to you with questions about  
 25 whether or not they could provide physician practices

<p style="text-align: right;">Page 45</p> <p>1 Q. Do you recall any others?</p> <p>2 A. No.</p> <p>3 Q. What was the nature of the relationship</p> <p>4 between PCLS and SLP?</p> <p>5 MR. VILLMER: Objection to form.</p> <p>6 Q. You can answer.</p> <p>7 A. Co-marketing.</p> <p>8 Q. Tell me what that means.</p> <p>9 A. They would introduce us to their customers</p> <p>10 and we would introduce them to our customers.</p> <p>11 Q. Okay.</p> <p>12 MR. VILLMER: Would anybody mind if we just</p> <p>13 took a quick break? Is that all right?</p> <p>14 MS. ARMSTRONG: Ten minutes? Five minutes?</p> <p>15 Why don't we reconvene around 11.</p> <p>16 (Thereupon, a brief recess was taken, after</p> <p>17 which the following proceedings were had:)</p> <p>18 THE VIDEOGRAPHER: We're back on the record</p> <p>19 at 11:03.</p> <p>20 BY MS. ARMSTRONG:</p> <p>21 Q. Great. Thank you guys.</p> <p>22 Mr. Sowinski, before we broke we were talking</p> <p>23 about analyzers and I frankly forgot the question I</p> <p>24 was asking you, so let me try again with a new</p> <p>25 question.</p>	<p style="text-align: right;">Page 47</p> <p>1 MR. VILLMER: Objection to the form.</p> <p>2 Objection to the form. But you can answer.</p> <p>3 A. No.</p> <p>4 Q. Are you familiar with a Dr. John Johnson?</p> <p>5 A. Yes.</p> <p>6 Q. What do you know about Dr. John Johnson?</p> <p>7 MR. VILLMER: Object to the form, but you can</p> <p>8 answer.</p> <p>9 A. He was a customer of PCLS.</p> <p>10 Q. By customer what do you mean?</p> <p>11 A. He sent us patient specimens for laboratory</p> <p>12 testing.</p> <p>13 Q. What type of doctor was he?</p> <p>14 A. I don't know.</p> <p>15 Q. Do you know who at PCLS handled Dr. Johnson's</p> <p>16 account?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you know what timeframe Dr. Johnson was a</p> <p>19 customer of PCLS?</p> <p>20 A. I don't remember.</p> <p>21 Q. Do you have knowledge of any discussions</p> <p>22 between Dr. Johnson and Manoj Kumar about the</p> <p>23 provision of an analyzer for Dr. Johnson's office?</p> <p>24 MR. VILLMER: Objection to the form.</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 46</p> <p>1 You had mentioned that PCLS did have a</p> <p>2 co-marketing relationship with an analyzer vendor,</p> <p>3 SLP. Is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. What was the nature of that</p> <p>6 co-marketing arrangement? Can you describe it for us?</p> <p>7 A. I'm not sure what you mean by the nature of</p> <p>8 that arrangement.</p> <p>9 Q. What does a co-marketing agreement entail?</p> <p>10 A. I don't recall exactly what the co-marketing</p> <p>11 agreement said. But my understanding of the</p> <p>12 relationship was that they were introducing us to</p> <p>13 their customers and we had the opportunity to</p> <p>14 introduce them to our customers.</p> <p>15 Q. Was there any exchange of money between PCLS</p> <p>16 and SLP as part of the co-marketing arrangement?</p> <p>17 MR. VILLMER: Objection to the form. But you</p> <p>18 can answer.</p> <p>19 A. There was no financial relationship to my</p> <p>20 knowledge, with the exception of an analyzer Phil may</p> <p>21 have purchased from SLP early on for the use in our</p> <p>22 laboratory.</p> <p>23 Q. Gotcha. Okay. Are you aware of Mr. McHugh</p> <p>24 being involved in the procurement of any other</p> <p>25 analyzers?</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Do you have knowledge of any discussions</p> <p>2 between Mr. McHugh and Dr. Johnson regarding the</p> <p>3 provision of an analyzer for Dr. Johnson's office?</p> <p>4 MR. VILLMER: Same objection.</p> <p>5 A. No.</p> <p>6 Q. I'll ask it a different way. Did Mr. McHugh</p> <p>7 ever talk to you about getting an analyzer in Dr.</p> <p>8 Johnson's office?</p> <p>9 MR. VILLMER: Objection to the form.</p> <p>10 BY MS. ARMSTRONG:</p> <p>11 Q. Did that question make sense?</p> <p>12 A. Not that I remember.</p> <p>13 Q. Did Manoj Kumar ever talk to you about</p> <p>14 putting an analyzer in Dr. Johnson's office?</p> <p>15 MR. VILLMER: Same objection.</p> <p>16 BY MS. ARMSTRONG:</p> <p>17 Q. You can answer.</p> <p>18 A. No.</p> <p>19 Q. If PCLS was thinking about putting an</p> <p>20 analyzer in a doctor's office, and I mean paying for</p> <p>21 or reimbursing a doctor for expenses related to an</p> <p>22 analyzer, is that something PCLS's compliance</p> <p>23 department should vet?</p> <p>24 MR. VILLMER: Objection. Calls for</p> <p>25 speculation and objection to the form.</p>

12 (Pages 45 to 48)



1 BY MS. ARMSTRONG:  
 2 Q. In your role as compliance and based on your  
 3 experience working in compliance at the company, what  
 4 is your answer?  
 5 MR. VILLMER: Same objection.  
 6 A. Yes, that should be reviewed by compliance  
 7 and legal.  
 8 Q. Tell us why.  
 9 A. If you are providing anything to a physician,  
 10 it needs to be compliant.  
 11 Q. Did anyone ever consult you at any time  
 12 related in any way to analyzer equipment for Dr.  
 13 Johnson?  
 14 MR. VILLMER: Objection to the form.  
 15 A. No.  
 16 Q. Did that question make sense?  
 17 A. Yes.  
 18 Q. Okay. Are you familiar with Dr. John  
 19 Nichols?  
 20 A. Sounds familiar.  
 21 Q. What do you know about Dr. Nichols?  
 22 MR. VILLMER: Objection to the form.  
 23 A. I don't know anything beyond that it sounds  
 24 familiar.  
 25 Q. Okay. Do you believe he was a PCLS customer

1 reimbursement to Dr. Nichols for expenses related to  
 2 putting an analyzer in his office?  
 3 MR. VILLMER: Objection to form.  
 4 A. No.  
 5 Q. Is it fair to say while you were at PCLS from  
 6 2009 through 2016 you knew nothing about the provision  
 7 of an analyzer or analyzer equipment to Dr. Nichols?  
 8 MR. VILLMER: Object to the form.  
 9 THE WITNESS: Can you restate the question?  
 10 BY MS. ARMSTRONG:  
 11 Q. Sure. Is it fair to say during your time at  
 12 PCLS you had no knowledge of the provision of an  
 13 analyzer or analyzer equipment to Dr. Nichols?  
 14 MR. VILLMER: Same objection.  
 15 A. Yes, I had no knowledge.  
 16 Q. Okay. Same question as to Dr. Johnson.  
 17 During your time at PCLS, did you have any knowledge  
 18 about the provision of an analyzer or analyzer  
 19 equipment to Dr. Johnson?  
 20 MR. VILLMER: Objection to the form.  
 21 A. No.  
 22 Q. No knowledge. Is that correct?  
 23 A. No knowledge.  
 24 Q. Who is Manoj Kumar?  
 25 A. A friend of Phil McHugh.

1 at one point?  
 2 MR. VILLMER: Objection to the form.  
 3 A. Yes.  
 4 Q. Why do you believe he was a PCLS customer?  
 5 A. Because it sounds familiar.  
 6 Q. Do you know who at PCLS handled the Nichols  
 7 account?  
 8 A. No.  
 9 Q. Do you know the timeframe during which he  
 10 referred samples to PCLS?  
 11 A. No.  
 12 Q. Did anyone at PCLS ever consult you regarding  
 13 the placement of an analyzer in Dr. Nichols' office?  
 14 MR. VILLMER: Objection to the form.  
 15 A. No.  
 16 Q. Did Mr. McHugh ever talk to you about the  
 17 provision of an analyzer in Dr. Nichols' office?  
 18 MR. VILLMER: Same objection.  
 19 A. No.  
 20 Q. Did Mr. McHugh ever talk to you about  
 21 reimbursing Dr. Nichols for expenses related to  
 22 putting an analyzer in his office?  
 23 MR. VILLMER: Same objection.  
 24 A. No.  
 25 Q. Did Manoj Kumar ever talk to you about

1 Q. Did Manoj Kumar ever work for PCLS?  
 2 A. Yes.  
 3 Q. When did Manoj Kumar first come to work with  
 4 PCLS?  
 5 A. I don't remember.  
 6 Q. Was it after you had started with the  
 7 company?  
 8 A. Yes.  
 9 Q. Okay. Do you know who brought Manoj Kumar  
 10 into PCLS?  
 11 MR. VILLMER: Objection to the form.  
 12 A. Phil McHugh.  
 13 Q. What do you know about that?  
 14 A. That Phil McHugh wanted Manoj Kumar to come  
 15 work as a sales manager for PCLS.  
 16 Q. Do you have any information as to why Phil  
 17 McHugh wanted Manoj Kumar to come work as a sales  
 18 manager for PCLS?  
 19 MR. VILLMER: Objection to the form.  
 20 A. No.  
 21 Q. Were you involved in any way in the hiring of  
 22 Manoj Kumar?  
 23 A. Yes.  
 24 Q. Tell us about your involvement.  
 25 A. I worked with Joe Weigel and Phil McHugh to

1 develop a contract with our counsel, in-house  
 2 counsels, the terms of the agreement.  
 3 Q. And let me clarify. Was that when Mr. Kumar  
 4 was transitioning into his role as an employee of  
 5 PCLS?  
 6 MR. VILLMER: Objection to the form.  
 7 A. Yes.  
 8 Q. Before he became an employee of PCLS, was  
 9 Mr. Kumar employed by the company as a contractor?  
 10 A. Yes.  
 11 Q. In what capacity?  
 12 A. Sales representative.  
 13 Q. Okay. Did you have any role in bringing in  
 14 Mr. Kumar as a sales representative for PCLS?  
 15 A. No.  
 16 Q. Do you recall when he started as a sales  
 17 representative for PCLS?  
 18 A. No.  
 19 Q. And are you familiar with his entity MK Land  
 20 Holdings?  
 21 MR. VILLMER: Objection to the form.  
 22 A. Sounds familiar.  
 23 Q. Was MK Land Holdings a sales representative  
 24 for PCLS.  
 25 A. I don't know.

1 Q. Would that be outside the scope of your  
 2 day-to-day?  
 3 MR. VILLMER: Objection to the form.  
 4 A. I don't know.  
 5 Q. Was it part of your day-to-day  
 6 responsibilities to know who the PCLS sales reps were?  
 7 A. No.  
 8 Q. Was that a function of the sales team  
 9 management?  
 10 A. Yes.  
 11 Q. Did you ever have a role in signing up sales  
 12 reps?  
 13 MR. VILLMER: Objection to the form.  
 14 A. No.  
 15 Q. What is a 1099 channel partner?  
 16 A. Independent contractor sales representative.  
 17 Q. When you joined the company in 2009, what was  
 18 the sales force made up of?  
 19 MR. VILLMER: Objection to the form.  
 20 A. Sales representatives.  
 21 Q. I'm sorry?  
 22 A. Sales representatives.  
 23 Q. Were they 1099 or W-2 employees?  
 24 A. Both, if I recall.  
 25 Q. Okay. Was there a higher percentage of 1099

1 to W-2 employees?  
 2 A. Initially.  
 3 MR. VILLMER: Objection to the form.  
 4 Q. Initially?  
 5 A. Yes.  
 6 Q. Did that eventually change?  
 7 A. Yes.  
 8 Q. What was the reason for that change?  
 9 A. Privileged.  
 10 Q. Okay. So the change was made based on  
 11 information that you obtained through counsel?  
 12 MR. VILLMER: Just real quick for the record,  
 13 I think we -- you either need to get a foot in  
 14 the camp of asking him to answer these questions  
 15 about what counsel said or don't, one of the two.  
 16 MS. ARMSTRONG: When he says privilege, I'm  
 17 just trying to understand whose privilege. Was  
 18 it the company's privilege that you're asserting?  
 19 That's fine. I don't think we want to wade into  
 20 that.  
 21 MR. IRVING: Our position would be that Mr.  
 22 Sowinski is not in a position to waive the  
 23 company's privilege. So, Mr. Sowinski, I would  
 24 instruct you not to answer any questions that  
 25 would require you to disclose your communications

1 with legal counsel for the company or for your  
 2 own personal attorneys, if that happens to be the  
 3 case.  
 4 BY MS. ARMSTRONG:  
 5 Q. And the answer is privileged. I'm just  
 6 trying to clarify privilege based on the company's  
 7 attorney-client privilege or your personal privilege  
 8 or some other privilege.  
 9 A. Advice given by the company's attorney.  
 10 Q. Okay. Thank you.  
 11 Going back to Mr. Kumar, do you know how long  
 12 he was a 1099 sales rep?  
 13 A. No.  
 14 Q. Do you know if he had a written agreement  
 15 with PCLS to be a sales rep?  
 16 A. I don't know.  
 17 Q. Was that a standard procedure back in early  
 18 2009, 2010 when you started with the company?  
 19 MR. VILLMER: Objection to the form.  
 20 A. Yes.  
 21 Q. Sales reps typically have written agreements  
 22 with the company?  
 23 A. Yes.  
 24 Q. Do you know if Mr. Kumar -- I think you said  
 25 you did not know if Mr. Kumar had a written agreement

1 with the company.  
 2 A. I don't recall.  
 3 Q. Do you recall if any of the entities owned or  
 4 controlled by Mr. Kumar had written sales rep  
 5 agreements with the company?  
 6 MR. VILLMER: Objection to the form.  
 7 Q. You don't recall?  
 8 A. I don't know.  
 9 MR. IRVING: Mr. Sowinski, I just wanted to  
 10 thank you for repeating your answers occasionally  
 11 on the record. I believe your initial answers  
 12 are sometimes getting drowned out by objections,  
 13 so thank you.  
 14 THE WITNESS: Yeah. I'm going to try to  
 15 pause for potential objections before I give an  
 16 answer.  
 17 MS. ARMSTRONG: Sounds good.  
 18 BY MS. ARMSTRONG:  
 19 Q. Who was involved in signing Mr. Kumar up as a  
 20 sales representative for PCLS?  
 21 A. I don't know.  
 22 Q. But it wasn't you?  
 23 A. No.  
 24 Q. Do you believe Mr. McHugh was involved in  
 25 that?

1 MR. VILLMER: Objection to the form and calls  
 2 for speculation.  
 3 A. Yes.  
 4 Q. Why do you believe Mr. McHugh was involved in  
 5 bringing Mr. Kumar in as a sales representative?  
 6 A. Phil McHugh was the person that worked the  
 7 most closely with Manoj Kumar.  
 8 Q. Did Mr. McHugh as part of his  
 9 responsibilities as CEO have the ability to hire  
 10 employees?  
 11 A. Yes.  
 12 MR. VILLMER: Objection to the form.  
 13 THE WITNESS: Yes.  
 14 BY MS. ARMSTRONG:  
 15 Q. As CEO, did Mr. McHugh have the ability and  
 16 did he hire sales representatives?  
 17 MR. VILLMER: Objection to the form.  
 18 A. Yes.  
 19 Q. Did Mr. McHugh at the time have to get  
 20 approval from the other owners, you and Mr. Smith, to  
 21 make personnel decisions such as hiring?  
 22 MR. VILLMER: Objection to the form.  
 23 A. No.  
 24 Q. Are you aware that Mr. Kumar was managing two  
 25 physicians' practices in Indiana when he became a

1 sales representative for PCLS?  
 2 MR. VILLMER: Objection to the form.  
 3 A. No.  
 4 Q. You were not aware?  
 5 A. Not aware.  
 6 Q. I will clarify. When I say he became a sales  
 7 rep, I am referring to either Mr. Kumar or acting as  
 8 his company.  
 9 MR. VILLMER: Same objection.  
 10 A. I didn't hear your question.  
 11 Q. Sure. I wanted to clarify, when I say  
 12 Mr. Kumar as a sales representative, my understanding  
 13 is one of his entities actually entered into a sales  
 14 representative agreement with PCLS and was a 1099  
 15 general partner. Is that your understanding? Do you  
 16 have any knowledge about that?  
 17 MR. VILLMER: Objection to the form.  
 18 THE WITNESS: What's the question?  
 19 BY MS. ARMSTRONG:  
 20 Q. The question is, I'll ask it two different  
 21 ways. The question is are you aware that when  
 22 Mr. Kumar became a sales representative of PCLS that  
 23 he was managing two physician practices in Indiana?  
 24 MR. VILLMER: Objection to the form.  
 25 A. No.

1 Q. Did you ever become aware of that fact?  
 2 MR. VILLMER: Objection to the form.  
 3 A. No.  
 4 Q. Are you familiar with the name Gregory  
 5 Masimore?  
 6 A. Yes. Sounds familiar.  
 7 Q. Was Gregory Masimore a customer of PCLS?  
 8 A. I don't know.  
 9 Q. Who would know the answer to that?  
 10 MR. VILLMER: Objection to the form.  
 11 A. Phil McHugh.  
 12 Q. Are you familiar with the name Yunus Shaw?  
 13 A. Sounds familiar.  
 14 Q. Is he a customer or was he a customer of  
 15 PCLS?  
 16 A. I don't know.  
 17 Q. Is that also something that you believe Mr.  
 18 McHugh may know the answer to?  
 19 MR. VILLMER: Objection to the form.  
 20 A. Yes.  
 21 Q. All right. Let me ask the question another  
 22 way. Were you aware when MK Land Holdings became a  
 23 sales representative for PCLS that Manoj Kumar was  
 24 managing two physician practices in Indiana?  
 25 MR. VILLMER: Objection to the form.



<p style="text-align: right;">Page 61</p> <p>1 A. No.</p> <p>2 Q. Do you know who at PCLS had the Masimore</p> <p>3 account?</p> <p>4 MR. VILLMER: Objection to the form.</p> <p>5 A. No.</p> <p>6 Q. Did the question make sense? My</p> <p>7 understanding is a sales rep has a specific physician</p> <p>8 practice for provider accounts. Am I using the right</p> <p>9 terminology?</p> <p>10 A. Yes.</p> <p>11 Q. So you do not know who at PCLS had the</p> <p>12 Masimore account. Correct?</p> <p>13 MR. VILLMER: Objection. Asked and answered.</p> <p>14 A. Correct.</p> <p>15 Q. Do you know who at PCLS had the Yunus Shaw</p> <p>16 account?</p> <p>17 A. No.</p> <p>18 Q. Around what time did Mr. Kumar's role at PCLS</p> <p>19 transition from sales rep to W-2 employee?</p> <p>20 A. I don't recall exactly when.</p> <p>21 Q. But if I understood you correctly, you were</p> <p>22 involved in that process. Is that correct?</p> <p>23 A. I was made aware of it.</p> <p>24 Q. When were you made aware of it?</p> <p>25 A. I believe Phil presented it to the partners</p>	<p style="text-align: right;">Page 63</p> <p>1 Q. Okay. So my question to you is did Mr. Kumar</p> <p>2 need to be converted to a W-2 employee in order to</p> <p>3 handle that task?</p> <p>4 MR. VILLMER: Objection to the form.</p> <p>5 A. Yes, to make him a manager.</p> <p>6 Q. Okay. Okay. Do you recall any other</p> <p>7 meetings or conversations with Mr. McHugh regarding</p> <p>8 the change in Mr. Kumar's employment?</p> <p>9 A. No.</p> <p>10 Q. Who was on the board at the time of that</p> <p>11 presentation that you mentioned earlier?</p> <p>12 A. Joe Weigel. And I can't remember if it was</p> <p>13 Doug Smith or Avery Chapman at the time.</p> <p>14 Q. What was Joe Weigel's role at the company at</p> <p>15 the time of this meeting?</p> <p>16 A. CEO.</p> <p>17 Q. And do you recall when that occurred? When</p> <p>18 he became CEO?</p> <p>19 A. He left his company he was working for and</p> <p>20 came to work for PCLS. At that time all of the titles</p> <p>21 and roles changed.</p> <p>22 Q. How did Mr. McHugh's role change at PCLS</p> <p>23 after Joe Weigel came over?</p> <p>24 A. Joe became president and CEO to manage</p> <p>25 operations of the laboratory, given his laboratory</p>
<p style="text-align: right;">Page 62</p> <p>1 or to the board about making Manoj a sales manager.</p> <p>2 Q. Do you remember anything specific from Mr.</p> <p>3 McHugh's presentation to the board on that topic?</p> <p>4 A. No.</p> <p>5 Q. Do you remember why Mr. McHugh -- what Mr.</p> <p>6 McHugh said about why he was proposing that change?</p> <p>7 A. He wanted Manoj Kumar to handle the 1099</p> <p>8 channel partners.</p> <p>9 Q. Do you recall any other reasons that Mr.</p> <p>10 McHugh gave the board as to why he was suggesting this</p> <p>11 change?</p> <p>12 A. No.</p> <p>13 Q. Was Mr. Kumar unable to manage the 1099</p> <p>14 channel partners as a 1099 contractor for the company?</p> <p>15 MR. VILLMER: Objection to the form.</p> <p>16 A. I don't understand the question.</p> <p>17 Q. Okay. I think you've told us that Mr. McHugh</p> <p>18 in a meeting with the board presented this change in</p> <p>19 employment for Manoj Kumar from 1099 contractor to W-2</p> <p>20 employee. Is that correct so far?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And you told us the reason was given</p> <p>23 by Mr. McHugh that this way he could handle the 1099</p> <p>24 channel partners. Is that correct?</p> <p>25 A. To manage the 1099 channel partners.</p>	<p style="text-align: right;">Page 64</p> <p>1 background. And Phil McHugh focused primarily on</p> <p>2 sales after that.</p> <p>3 Q. After Joe Weigel came to PCLS, was Mr. McHugh</p> <p>4 still in a management position?</p> <p>5 A. Yes.</p> <p>6 Q. Management of the sales team?</p> <p>7 MR. VILLMER: Objection. Asked and answered.</p> <p>8 BY MS. ARMSTRONG:</p> <p>9 Q. I'm sorry. Was that a yes?</p> <p>10 A. Yes.</p> <p>11 Q. Did he manage any other teams?</p> <p>12 A. Not that I'm aware of.</p> <p>13 Q. What was your understanding of Mr. McHugh's</p> <p>14 responsibilities in terms of his management of the</p> <p>15 sales team at that time?</p> <p>16 A. To work with the sales team to grow the</p> <p>17 business.</p> <p>18 Q. And did Mr. McHugh continue in that capacity</p> <p>19 as manager of the sales team until the business was</p> <p>20 sold in 2016?</p> <p>21 A. Yes.</p> <p>22 Q. Was there ever a point at which you recall</p> <p>23 Mr. McHugh stepping down from management?</p> <p>24 A. No.</p> <p>25 Q. Mr. Kumar was eventually terminated from the</p>


16 (Pages 61 to 64)

<p style="text-align: right;">Page 73</p> <p>1 Q. Did the company take any action upon learning</p> <p>2 about the loan issues?</p> <p>3 A. Yes.</p> <p>4 Q. What action was that?</p> <p>5 A. Investigation with counsel.</p> <p>6 Q. And at the conclusion of the investigation,</p> <p>7 did the company take any further action with regard to</p> <p>8 the loans or Mr. McHugh?</p> <p>9 A. There was a special board meeting at which</p> <p>10 counsel was present. I was not present.</p> <p>11 Q. Are you aware of the company making any</p> <p>12 repayments related to any loan given by or at the</p> <p>13 direction of Mr. McHugh?</p> <p>14 MR. VILLMER: Objection to the form.</p> <p>15 A. I was told by Alan Campbell that they were</p> <p>16 refunding Medicare for a doctor in Indiana I think it</p> <p>17 was.</p> <p>18 Q. I'm sorry. What was that?</p> <p>19 A. I was told by Alan Campbell that they were</p> <p>20 refunding Medicare for the claims submitted for the</p> <p>21 doctor in Indiana or Illinois, whichever.</p> <p>22 Q. Whichever it may turn out to be?</p> <p>23 A. I don't recall if it was Indiana or Illinois.</p> <p>24 Q. Okay. Was Manoj Kumar to your knowledge</p> <p>25 involved in the provision of the loans to these two</p>	<p style="text-align: right;">Page 75</p> <p>1 made a payment. Is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. Did anyone at PCLS consult you before either</p> <p>4 of these two loans were made?</p> <p>5 A. No.</p> <p>6 Q. Are you familiar with the Department of</p> <p>7 Health and Human Services Office of Inspector</p> <p>8 General's fraud alert?</p> <p>9 A. Yes.</p> <p>10 Q. What do you know about those?</p> <p>11 A. That there's a link on their website where</p> <p>12 you can report fraud.</p> <p>13 Q. Were you also familiar with the fraud alert</p> <p>14 publications that were published by the agency or</p> <p>15 disseminated by the agency?</p> <p>16 A. No, I'm not familiar with that.</p> <p>17 Q. I'm going to change topics here for a minute</p> <p>18 and talk about Doug Smith. You mentioned that you had</p> <p>19 worked with Mr. Smith at PCDS prior to coming to PCLS.</p> <p>20 How did you know Mr. Smith?</p> <p>21 A. He was introduced to me through a family</p> <p>22 friend.</p> <p>23 Q. Was that before you started working with him</p> <p>24 at PCDS?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 74</p> <p>1 providers?</p> <p>2 MR. VILLMER: Objection to the form.</p> <p>3 A. That was something I was told.</p> <p>4 Q. Who told you that?</p> <p>5 A. Alan Campbell.</p> <p>6 Q. And what were you told about Manoj Kumar's</p> <p>7 involvement in the loans?</p> <p>8 A. I don't remember.</p> <p>9 Q. How many conversations do you recall having</p> <p>10 with your compliance department about these loan</p> <p>11 issues?</p> <p>12 MR. VILLMER: Objection to the form.</p> <p>13 A. Maybe two or three.</p> <p>14 Q. Are you aware of any repayment being made by</p> <p>15 PCLS to the MAC? Are you aware this actually</p> <p>16 happened?</p> <p>17 A. I don't know.</p> <p>18 Q. Did you ever take any steps to verify whether</p> <p>19 or not the company actually made a repayment to the</p> <p>20 MAC relating to one or more of the loans?</p> <p>21 A. No. If Alan said -- if Alan Campbell said</p> <p>22 they were going to do something, I trusted Alan</p> <p>23 Campbell.</p> <p>24 Q. I want to be clear. He said they were going</p> <p>25 to do something, he did not tell you that they had</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. What do you know about his professional</p> <p>2 background?</p> <p>3 A. He's a physician. I believe he worked as an</p> <p>4 emergency medicine physician, and then practiced pain</p> <p>5 management after that.</p> <p>6 Q. Do you recall where he was a practicing</p> <p>7 physician?</p> <p>8 A. In Florida. West Palm Beach.</p> <p>9 Q. To your knowledge, is he still a licensed</p> <p>10 medical doctor?</p> <p>11 A. No.</p> <p>12 Q. Did he at some point lose his medical</p> <p>13 license?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know anything about the circumstances</p> <p>16 surrounding that?</p> <p>17 A. Only what I read in the news.</p> <p>18 Q. What do you recall reading in the news?</p> <p>19 A. That a physician lost their license for the</p> <p>20 death of a patient.</p> <p>21 Q. And that was Mr. Smith?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Do you recall when he lost his</p> <p>24 license?</p> <p>25 A. I don't recall exactly.</p>

19 (Pages 73 to 76)


Page 117

1 CERTIFICATE OF OATH  
2  
3 STATE OF FLORIDA  
4 COUNTY OF BROWARD  
5  
6 I, the undersigned authority, certify that  
7 Marcus Sowinski appeared before me via Zoom on  
8 September 14, 2020, and was duly sworn.  
9 WITNESS my hand and official seal this  
10 23rd day of September 2020.  
11  
12  
13  
14  
15  
16 Mary Ann Collier  
Commission #GG056076  
Expires 2/21/21  
17  
18  
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Page 118

1 REPORTER'S DEPOSITION CERTIFICATE  
2  
3 I, MARY ANN COLLIER, Court Reporter, certify  
4 that I was authorized to and did stenographically  
5 report the videotaped deposition of Marcus Sowinski,  
6 that a review of the transcript was requested, and  
7 that the foregoing transcript, pages 1 through 116, is  
8 a true and complete record of my stenographic notes.  
9  
10 I further certify that I am not a relative,  
11 employee, attorney or counsel of any of the parties,  
12 nor am I a relative or employee of any of the parties'  
13 attorney or counsel connected with the action, nor am  
14 I financially interested in the action.  
15  
16 Dated this 23rd day of September 2020.  
17  
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21 MARY ANN COLLIER  
22  
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Page 119

1 ERRATA SHEET  
2 DO NOT WRITE ON TRANSCRIPT. ENTER CHANGES HERE.  
3 NAME: Marcus Sowinski  
4 RE: USA v. PCLS  
5 DATE OF DEPOSITION: 9/14/20  
6 Page/Line Change Reason  
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23 Under penalty of perjury, I declare that I have read  
24 my deposition and that it is true and correct,  
25 subject to any changes in form or substance entered  
above.  
Deponent's signature Date (Print Name)

Page 120

Fernandez & Associates, Inc.  
444 Brickell Avenue, Suite 718  
Miami, FL 33131  
305-374-8868  
service@fernandezcr.com  
September 23, 2020  
Brian F. Irving, Esq.  
Bass Berry & Sims  
150 Third Avenue South, Suite 2800  
Nashville, TN 37201  
birving@bassberry.com  
Re: USA v. PCLS  
Dear Mr. Irving:  
Please be advised that the deposition of  
Marcus Sowinski has been prepared and is awaiting  
signature. Please call our office at the above number  
to make arrangements for your client to read and sign  
his deposition.  
The deponent has 30 days from this date to read and  
sign the deposition. If we do not hear from you, it  
shall then be concluded that the reading and signing  
has been waived.  
Yours very truly,  
Fernandez & Associates  
cc: Katherine Armstrong, AUSA  
Matthew Villmer, Esq.

30 (Pages 117 to 120)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
CHARLOTTE DIVISION

UNITED STATES OF AMERICA, ex rel.	)	
TARYN HARTNETT, and DANA	)	
SHOCHED,	)	
	)	
Plaintiff,	)	
	)	Civil File No.
vs.	)	3:17-CV-37
	)	(Consolidated with Civil
PHYSICIANS CHOICE LABORATORY	)	File No. 3:17-CV-46)
SERVICES, DOUGLAS SMITH, PHILIP	)	
MCHUGH AND MANOJ KUMAR,	)	
	)	
Defendants.	)	

Video Deposition of JEFFREY ALAN THOMAS  
Wednesday, October 7, 2020

The deposition of JEFFREY ALAN THOMAS, called as a witness by the Plaintiff, pursuant to notice and the Federal Rules of Civil Procedure 30, pertaining to the taking of depositions, taken before me, the undersigned, Jill A. Oliver, Notary Public in and for the Commonwealth of Pennsylvania, via Zoom Video Conference, commencing at 9:30 o'clock a.m., the day and date above set forth.

COMPUTER-AIDED TRANSCRIPTION BY  
MORSE, GANTVERG & HODGE, INC.  
PITTSBURGH, PENNSYLVANIA  
412-281-0189

1 Q. When you started at PCLS, did you receive any training?

2 A. Yes.

3 Q. Can you talk about that with me?

4 A. Sure. It was -- I believe it was two days of training  
5 that we had the conference room at the laboratory. That  
6 training really was with the lab director, Mark, who gave us the  
7 science background of the testing was and the use of the  
8 equipment and what the results were. Other than that  
9 background, there really was no sales training. It was just the  
10 technical background side of it and what the results were and  
11 what the results meant and cutoffs and things like that for the  
12 results.

13 Q. As a sales rep, was there any periodic training, or was  
14 it just that training at the outset?

15 A. Initially, we did just the training at the outset. It  
16 was invited back to Charlotte for additional training with new  
17 representatives, and that was just, again, my input and feedback  
18 as to what was in the field.

19 Q. How were you paid?

20 A. I was paid monthly based on commissions based on the  
21 reimbursement for the samples that were sent in.

22 Q. Do you remember what percentage of that reimbursement  
23 you would get in commissions?

24 A. I want to say it was 8 percent.

25 Q. Was that 8 percent of collections or just what was

1 A. Yes.

2 Q. How often?

3 A. I would say mostly maybe a couple of times a month.

4 Q. Just generally what would the substance of those  
5 interactions be?

6 A. Those interactions really had to do with reimbursements  
7 and when the reimbursements would start coming in so I could  
8 actually get a paycheck.

9 Then further on down from that really, again, I was  
10 called into Charlotte to do training and have people ride with  
11 me and train them in the field as sales people. So I would have  
12 interactions with him and conversations with him regarding those  
13 folks and making arrangements for them to come to Pittsburgh or  
14 me going to Charlotte, and then later on, just really the  
15 general business and what was going on at PCLS.

16 Q. What is your understanding of what Phil McHugh's role  
17 in the company was?

18 A. He was I believe CEO. He was the investor; one of the  
19 owners.

20 Q. Did you also know Bill Hughes?

21 A. Ask the question again. I'm sorry.

22 Q. Do you also know Bill Hughes?

23 A. Yes.

24 Q. Who is Bill Hughes?

25 A. Bill Hughes is the owner of Universal Oral Fluid Labs

1 of Pennsylvania.

2 Q. How did you first meet Bill Hughes?

3 A. He contacted me in the course of me going around to,  
4 again, different offices. I had left my business card at an  
5 office in Coraopolis, Pennsylvania where his wife was a  
6 collector for another laboratory, and she gave that information  
7 to her husband Bill, and he reached out to me.

8 Q. What did you he reach out to you about?

9 A. His lab was doing oral fluid testing. He was doing  
10 screenings. Excuse me, and he was looking for a laboratory that  
11 could do confirmations for those tests that he was screening  
12 for.

13 Q. You mentioned screenings and confirmations. Can you  
14 generally explain what those terms mean?

15 MS. ROBERTO: I'm going to object and ask you rephrase  
16 the question so he can answer form his personal knowledge rather  
17 than give an opinion about what those terms mean.

18 MR. JOHNSON: Sure.

19 Q. You used the term "screening." What do you understand  
20 that term to mean?

21 A. A screen is a qualitative testing for drugs that we  
22 give you a detected or non-detected result.

23 Q. So a binary yes or no?

24 A. Correct. That's correct.

25 Q. And then I think that you also used the term

1 "confirmation."

2 A. Sure. Confirmation is a quantitative test result that  
3 would provide you with per millimeter of the drugs found in oral  
4 fluid or urine.

5 Q. So the quantitative test give you the amount of  
6 whatever you're testing for --

7 A. Correct.

8 Q. -- as the final result?

9 A. Yes.

10 Q. Bill Hughes at Universal was doing the qualitative  
11 testing, the screening, and he was looking for someone to do the  
12 quantitative tests on top of that?

13 A. Correct.

14 Q. And that would be testing for the same patient  
15 sample; right?

16 A. Yes.

17 Q. It would first go to screening and then confirmation  
18 testing?

19 A. Correct.

20 Q. Did you introduce Phil McHugh to Bill Hughes?

21 A. Yes, I did.

22 Q. Can you tell me about how that went down?

23 A. Again, Bill Hughes reached out to me and looked for the  
24 laboratory who could do oral fluid confirmation testing. I knew  
25 that PCLS was in the process of bringing on an oral fluid panel



1 for oral fluid testing, and so I reached out to the Phil McHugh  
2 and let him know that I met somebody that was looking for a lab  
3 to do confirmation testing of oral fluids. That ended up being  
4 why Phil McHugh came into Pittsburgh, and he met with  
5 Bill Hughes.

6 Q. Was that meeting, yourself, Bill Hughes and Phil  
7 McHugh?

8 A. Yes.

9 Q. Anyone else at that meeting?

10 A. No.?

11 Q. Do you remember generally when that was?

12 A. Probably the fall of 2010.

13 Q. What was discussed at that meeting?

14 A. The discussion was if PCLS would want to take those  
15 confirmations, and Bill Hughes would, again, do the screening  
16 and then sent the samples to PCLS for the confirmations, and  
17 that Bill Hughes at Universal Oral Fluids would continue to bill  
18 the screenings and PCLS would bill the confirmations,

19 Q. Did PCLS and Universal ever end up entering into that  
20 business arrangement?

21 A. Yes.

22 Q. When did that happen?

23 A. That would have been probably October or November of  
24 2010.

25 Q. You mentioned that you were there at that initial

1 meeting. Other than that, what else was your involvement in  
2 that arrangement the between Universal and PCLS?

3 MR. VILLMER: Objection to the form of the question?

4 A. Can you say the question again? I'm sorry.

5 Q. Sure. Other than that initial meeting that you just  
6 mentioned, can you describe your involvement, if any, in the  
7 business arrangement between PCLS and Universal?

8 MR. VILLMER: Objection to the form of the question.

9 A. Okay. Yes. On behalf of PCLS, I set up the -- any new  
10 business or any new claims that Universal brought on board, I  
11 would provide that information to PCLS so they in turn can set  
12 up the account to receive the samples and again distribute the  
13 lab results to those individual physicians.

14 Q. So was it Universal that was finding all of the  
15 doctors?

16 A. Yes.

17 Q. Was that -- can you just generally describe how was  
18 that done? Was there a form or separate forms for PCLS and  
19 Universal? Can you take me through the process of finding a  
20 doctor?

21 MR. VILLMER: Objection to the form.

22 A. I received information either from Bill Hughes or  
23 Amy Bogardus. That would be information on the new accounts,  
24 and that would include physician names, address, NPI number and  
25 that type of information. I would fill out the new account form

1 for PCLS and provide that to PCLS.

2 Q. Did you make commission from PCLS on the Universal  
3 confirmations?

4 A. Yes, I did.

5 Q. Was that the same 8 percent?

6 A. Yes.

7 Q. At the time was anyone at PCLS aware that Universal was  
8 paying physicians?

9 MR. VILLMER: Object to the form.

10 A. PCLS was aware of the agreements that Universal was  
11 using with these physicians.

12 Q. And can you just describe generally what the terms of  
13 those agreements between Universal and its physicians were?

14 A. Yes. The agreement -- let's start off that the  
15 physicians would pay \$100 per sample for the screening by  
16 Universal Oral Fluids, and in turn any monies over and above  
17 \$100 would be sent back and return to or paid to those  
18 individual physicians.

19 Q. So to make sure that I understand, originally the  
20 physicians paid \$100?

21 A. To clarify that, there was no money exchanged up front.  
22 It was really based on accounting, and after one, two, three or  
23 four months, as that accounting caught up, anything over and  
24 above the \$100 would be paid back to that physician.

25 Q. All of these samples were samples that were either

1 billed out to insurance or Medicare or someone like that; right?

2 MR. VILLMER: Objection to the form.

3 Q. You can answer.

4 A. That is correct.

5 Q. I'm just trying to make sure that I understand what you  
6 meant by no money was paid out but by accounting. So the  
7 physician never paid any money to Universal?

8 A. That's correct.

9 Q. Is it that when the sample was billed to the insurance  
10 company or Medicare, they would receive anything above \$100  
11 paid?

12 MR. VILLMER: Objection to the form.

13 A. Yes.

14 Q. What would happen if, for example, a sample was sent  
15 out and the insurance company only paid \$90 on it?

16 A. Universal did not bill physicians for the difference.

17 Q. Do you know why the \$100 figure was used?

18 A. That was a figure that Universal came up with and  
19 Bill Hughes came up with.

20 Q. The doctors never owed anything to Universal?

21 A. That's correct.

22 Q. But if the testing came back and it reimbursed over  
23 \$100, they would get whatever that extra was?

24 A. Yes.

25 Q. And that was the payment arrangement between the

1 physicians and Universal?

2 A. Yes.

3 Q. And you said that that was done in a written contract?

4 A. Yes. It was a license agreement.

5 Q. Did anyone at PCLS have copies of those license  
6 agreements?

7 A. Yes. Those were provided at PCLS.

8 Q. Who at PCLS were they provided to?

9 A. I believe that Phil McHugh received those from  
10 Bill Hughes.

11 Q. At the initial meeting between yourself and Mr. Hughes  
12 and Mr. McHugh, was Universal's payment arrangement discussed?

13 A. Yes.

14 Q. Can you tell me a little bit about those discussions?

15 A. Bill discussed the license agreement that he had based  
16 on the screening and discussed really what the agreement was is  
17 what we discussed.

18 Q. When you were at PCLS, was there any discussion of the  
19 possibility of doing something similar to what Universal was  
20 doing?

21 MR. VILLMER: Objection to the form.

22 A. I know that they looked at the agreements, but I don't  
23 know if there were discussions about implementing.

24 Q. At the beginning of PCLS' and Universal's arrangement,  
25 did Universal have a way to do confirmation testing at that

1 time?

2 MR. VILLMER: Objection to the form of the question.

3 MR. JOHNSON: What is your objection to that, Matt?

4 MR. VILLMER: At the beginning you said -- and I'm  
5 trying to recall the exact language, but you said the  
6 arrangement between PCLS and Universal Oral Labs or whatever it  
7 was. I don't quite understand what the arrangement is, but that  
8 is the basis for my objection.

9 Q. Mr. Thomas, we've been talking about a business  
10 arrangement between PCLS and Universal; correct?

11 A. Yes.

12 Q. So when I say that, you understand what I'm referring  
13 to?

14 A. Yes.

15 Q. So at the beginning of PCLS' and Universal's business  
16 arrangement, did Universal have a way to do confirmation testing  
17 at that time?

18 A. No.

19 Q. Did Universal ever begin working on a way to do their  
20 own confirmation testing?

21 A. Yes.

22 Q. Did that cause friction with PCLS?

23 A. Yes.

24 Q. Can you describe that?

25 A. Once Universal Oral Fluids was able to do

1 confirmations, all of the samples that were being sent through  
2 Universal back to PCLS they would stop, and Universal would be  
3 doing their own confirmation testing.

4 Q. Do you know generally what portion of PCLS' business  
5 came from Universal?

6 A. No. It would think substantial, but no, I don't know a  
7 percent.

8 Q. Do you know generally how much per month PCLS was  
9 making from the Universal business arrangement?

10 A. I mean, just based on my commission checks, it was  
11 probably in the millions.

12 Q. Did the business arrangement between Universal and PCLS  
13 end at some point?

14 A. Yes, it did.

15 Q. Can you talk about how that ended?

16 A. With the inevitability of Universal being able to do  
17 confirmation testing -- it would have been the October time  
18 frame or November of 2011 into December -- there was a plan to  
19 go after Universal's physicians and business, and there were  
20 conversations regarding those conversations with the physicians  
21 and with the offices. PCLS' plan was that they were not going  
22 to accept anymore confirmation tests from Universal, and if the  
23 offices wanted to continue to send to PCLS, they could do that;  
24 however, it would have to be a relationship directly with PCLS  
25 and the practice or office.

1 Q. Did PCLS make an effort to retain the business from  
2 Universal?

3 A. Yes.

4 Q. Could you talk about what those efforts were?

5 A. Again, there was a blitz -- I'll call it a blitz --  
6 where sales representatives in the majority of where those  
7 offices were to get face-to-face meetings and phone calls to  
8 make the announcement and give the information that PCLS would  
9 no longer accept any confirmation testing from Universal Oral  
10 Fluids and those sales representatives were supposed to retain  
11 that business.

12 Q. Are you familiar with what a desktop analyzer is?

13 A. Yes.

14 Q. What is your understanding of what a desktop analyzer  
15 is?

16 A. Quite simply -- I'll keep it simple. Essentially a  
17 desktop analyzer takes the sample, you put it in the analyzer,  
18 and the analyzer essentially calculates and spits out the  
19 information or the results, if you will, from the sample.

20 Q. Is that a type of machinery that a doctor could have at  
21 their office?

22 A. Yes.

23 Q. Did you ever attend any meeting at PCLS that discussed  
24 implementing a program where PCLS would help doctors obtain  
25 desktop analyzers?



1 A. Yes.

2 Q. Can you talk about those meetings?

3 A. I attended a meeting where we -- John Grove, Phil  
4 McHugh and myself -- I don't recall who else was there -- went  
5 to Carolina Liquid Systems and had a meeting with the owners  
6 there regarding their equipment and their desktop analyzers and  
7 what they could do and what the billing process would be with  
8 regard to using those machines in physician's offices.

9 Q. Is Carolina Liquid Systems in Greensboro?

10 A. Yes, I believe so.

11 Q. Other than the meeting at Carolina Liquid, any other  
12 meeting to talk about a desktop analyzer program?

13 A. Yes. There was --

14 MR. VILLMER: Object to the form.

15 Q. You can continue your answer.

16 A. There were meetings and conference calls regarding  
17 implementation and use of a desktop analyzer to provide revenue  
18 to individual physician offices and what that revenue stream  
19 would look like.

20 Q. Who was attending those meetings or on the phone calls?

21 A. That would have been John Grove, Phil McHugh, I think  
22 that Marcus was on those calls, but it was also the sales team  
23 and sales representatives.

24 Q. By Marcus, you mean Marcus Sowinski?

25 A. Sowinski, right. I believe that Manoj Kumar was a part

1 of those meetings too.

2 Q. As part of those discussions, was there any discussions  
3 of other labs setting up analyzers for doctors?

4 A. Other laboratories? No. Other than PCLS, no.

5 Q. Did you ever receive any emails regarding placing  
6 analyzers in doctors' offices?

7 A. Yes.

8 Q. Can you talk a little bit about that?

9 A. Yes. We received emails with spreadsheets that showed  
10 what the revenue would look like based on screening, based on  
11 moderately complex testing and highly complex testing.

12 Q. Was that revenue for the doctor?

13 A. Yes.

14 Q. Was there any discussion of revenue for PCLS?

15 A. Other than confirmation testing that would follow up,  
16 yes.

17 Q. Did you understand the analyzer programs involve  
18 getting confirmation testing at PCLS in exchange for setting up  
19 the analyser?

20 MR. VILLMER: Objection to form.

21 A. I don't remember that. I don't remember what any  
22 reimbursements would be back to PCLS. I'm not --

23 Q. Do you know if Universal ever provided analyzers to  
24 physicians?

25 A. Universal did not provide analyzers to physicians.

1 MR. JOHNSON: Let's take five. I might be about done.

2 THE VIDEOGRAPHER: Off the record at 10:20.

3 (Recess taken.)

4 THE VIDEOGRAPHER: We are back on the record at 10:32.

5 BY MR. JOHNSON:

6 Q. Mr. Thomas, earlier we were talking about the payment  
7 arrangements that Universal had with physicians?

8 A. Yes.

9 Q. Did PCLS express concerns to you about the payment  
10 arrangements that Universal had with physicians?

11 A. No.

12 Q. Did anyone at PCLS discuss concerns with you about  
13 doing business with Universal for any reason?

14 A. Can you ask the question one more time?

15 Q. Sure. Did anyone at PCLS ever express concerns to you  
16 about doing business with Universal for any reason?

17 A. Yes.

18 Q. What were those reasons?

19 A. Just if Universal was able to do their own confirmation  
20 testing, that would be a loss of business because of it. I  
21 would say that Bill Hughes and Phil McHugh do not have a good  
22 relationship.

23 Q. Could you explain that a little bit more?

24 A. Well, just the demands that Phil McHugh, Universal, had  
25 with PCLS with regard to PCLS did provide the collection devices

1 Q. Did PCLS make an effort to retain the business from  
2 Universal?

3 A. Yes.

4 Q. Could you talk about what those efforts were?

5 A. Again, there was a blitz -- I'll call it a blitz --  
6 where sales representatives in the majority of where those  
7 offices were to get face-to-face meetings and phone calls to  
8 make the announcement and give the information that PCLS would  
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17 desktop analyzer takes the sample, you put it in the analyzer,  
18 and the analyzer essentially calculates and spits out the  
19 information or the results, if you will, from the sample.

20 Q. Is that a type of machinery that a doctor could have at  
21 their office?

22 A. Yes.

23 Q. Did you ever attend any meeting at PCLS that discussed  
24 implementing a program where PCLS would help doctors obtain  
25 desktop analyzers?

1 independent contractor to a W-2 employee?

2 A. Yes.

3 Q. And who did you talk to about that?

4 A. Marcus Sowinski.

5 Q. And tell me a little bit about the content of that  
6 conversation.

7 A. They just wanted me to become a full time employee, a  
8 W-2 employee, as opposed to a 1099 employee.

9 Q. Did you want to do that?

10 A. No.

11 Q. And was that conversation around November or December  
12 of 2012 -- 2011 shortly before you left?

13 A. Yes.

14 Q. And why didn't you want to become a W-2 employee of  
15 Physicians Choice?

16 A. My income would have been cut.

17 Q. So your commissions would have been cut as a result?

18 A. Yes.

19 Q. And considering Physicians Choice was halting its  
20 relationship with Universal Oral Fluids, would that have also  
21 resulted in the lowering of your commissions if you would have  
22 remained employed by Physicians Choice?

23 A. Yes.

24 Q. So as a result of that, I guess you and Physicians  
25 Choice parted ways. Where did you go to work after you left

1 Physicians Choice in late November of 2011?

2 A. I began working with Universal Oral Fluids back in  
3 January of 2012.

4 Q. What was your position with them?

5 A. Chief operations officer.

6 Q. And talk to me a little bit about why when you left  
7 Physicians Choice you decided to go work for Bill Hughes and  
8 Universal Oral Fluids?

9 A. Sure. In talking with Bill Hughes, and again the fact  
10 that Universal was setting up a highly complex lab, he needed  
11 somebody to oversee the operations. It was a good fit for me,  
12 and so I decided to go with Bill Hughes.

13 Q. Why was it a good fit for you?

14 A. To be able to do the operations side and oversee that  
15 side of the business -- the laboratory side of the business.

16 Q. Before that time, did you have any experience  
17 overseeing the operations of a lab?

18 A. No.

19 Q. So talk to me a little bit about what Bill Hughes saw  
20 in your qualifications that indicated that you would be the  
21 right fit to operate a lab?

22 A. Sure. My organization skills were probably first and  
23 foremost, the fact that over the course of the time in  
24 discussing the fact that he was moderate complex and moving to  
25 highly complex and doing research with regard to what that

1 entails and what that means and to help with what that  
2 laboratory needed to get it from moderately to highly complex,  
3 it was a good fit, and that was all based on discussions of what  
4 he needed.

5 Q. I think that you testified earlier, speaking of these  
6 written agreements Universal Oral Fluids and various doctors  
7 about how they would be paid, I think that you indicated that  
8 PCLS had copies of these agreements; right?

9 A. They had copies of -- not the individual agreements  
10 between physicians and Universal but what that agreement looked  
11 like; a blank agreement.

12 Q. They had a form agreement but not the individual  
13 agreements with ever single doctor?

14 A. Correct.

15 Q. And PCLS as a whole I guess had a form agreement. Were  
16 you also aware of the content of the form agreement?

17 A. Yes.

18 Q. And you were aware of that while you were employed or  
19 working as an independent contractor for Physicians  
20 Choice; right?

21 A. Yes.

22 Q. When did you stop working for Bill Hughes and Universal  
23 Oral Fluids?

24 A. June or July of 2014.

25 Q. And why did you stop working for Bill Hughes and

1 Universal Oral Fluids?

2 A. The laboratory was shut down.

3 Q. Why was the laboratory shut down?

4 A. The laboratory was under investigation by the FBI.

5 Q. And how did you learn for the first time that the  
6 laboratory was under investigation by the FBI?

7 A. When the FBI came to the laboratory and they also came  
8 to my home.

9 Q. So the FBI raided the laboratory?

10 A. Yes.

11 Q. And did the FBI kind of, I guess, raid your home as  
12 well?

13 A. Yes. They did come to my home.

14 MS. ROBERTO: I'm going object to the word "raid." It  
15 was an execution of a search warrant.

16 MR. VILLMER: Understood.

17 Q. Are you aware that earlier this year that Bill Hughes  
18 pled guilty to frauding the government out of over 1.6 million  
19 through cash payment kickback to doctors?

20 A. Yes.

21 Q. At any point in time did you own a 1999 Bentley Azure  
22 car?

23 A. Yes.

24 Q. Was that a convertible or hard top?

25 A. It's a convertible.



1 Q. The form agreement between Universal and  
2 physicians that you discussed with Mr. Villmer, who at  
3 PCLS held that form agreement to your knowledge?

4 MR. VILLMER: Objection to form.

5 A. Which agreement are we talking about? The  
6 agreements between PCLS and Universal?

7 Q. No. Let me break it down for you. That is a  
8 fair clarification.

9 When you were talking with Mr. Villmer, you  
10 were talking about how the agreement that Universal  
11 had with physicians, PCLS had a form copy of that  
12 agreement but not specific individual agreements with  
13 the doctors?

14 A. Yes. That's correct.

15 Q. That form agreement of the arrangement with  
16 physicians between Universal and those physicians, who  
17 at PCLS, to your knowledge, saw that agreement?

18 A. It was Phil McHugh had a copy of it.

19 Q. Anyone else that you know?

20 A. No.

21 Q. When is that last time that you spoke with  
22 Phil McHugh?

23 A. November of 2011.

24 Q. So when you left PCLS?

25 A. Yes.

1 CERTIFICATE

2 COMMONWEALTH OF PENNSYLVANIA, )  
 ) SS:  
3 COUNTY OF ALLEGHENY. )

4 I, Jill A. Oliver, do hereby certify that before  
me, a Notary Public in and for the Commonwealth  
5 aforesaid, personally appeared JEFFREY ALAN THOMAS,  
who then was by me first duly cautioned and sworn to  
6 testify the truth, the whole truth, and nothing but  
the truth in the taking of his oral deposition in the  
7 cause aforesaid; that the testimony then given by him  
as above set forth was by me reduced to stenotype in  
8 the presence of said witness, and afterwards  
transcribed by means of computer-aided transcription.

I do further certify that this deposition was  
10 taken at the time and place in the foregoing caption  
specified.

I do further certify that I am not a relative,  
12 counsel or attorney of either party, or otherwise  
interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand  
14 and affixed my seal of office at Pittsburgh,  
Pennsylvania, on this \_\_\_\_\_ day of \_\_\_\_\_,  
15 2020.

16

17

18 In and for the Commonwealth of Pennsylvania  
My comission expires: September 23, 2023

20

21

22

23

24

25

**In The Matter Of:**  
*United States of America v.*  
*Physicians Choice Laboratory Services, LLC, et al.*

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*Joseph Wiegel*  
*September 24, 2020*

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1 A Well, I started out environmental. We were testing  
2 water, soil, air for pollutants, mostly -- mostly  
3 related to cleanup of contaminated sites. So I  
4 worked ultimately for a company called Columbia  
5 Analytical Services. We had seven labs across the  
6 country. I was a regional manager.  
7 Q Okay.  
8 A I left that company and started a business called  
9 Novidea. That was a sales business that sold  
10 analytical equipment to laboratories doing analytical  
11 chemistry. And I was -- I don't know. Somehow that  
12 transitioned into working for a company called  
13 Quantum Analytics. Quantum Analytics sold mass  
14 spectrometers.  
15 Phil -- or, rather, Physicians Choice  
16 Laboratory Services reached out to me to buy their  
17 first mass spectrometer, and that was in 2009-ish.  
18 So from there Physicians Choice took off, until we  
19 closed it in 2016, I think, and -- and that was the  
20 end of my analytical chemistry, and I bought a  
21 business here in -- it's located in Evansville and  
22 Owensboro, managing clinical trial sites, clinical  
23 trial sites for -- we work with most of the major  
24 pharmaceutical companies across the country.  
25 Q Okay.

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1 A So that brings us up to date.  
2 Q Yeah. And so when you first started out in the  
3 laboratory setting, did you physically work inside of  
4 the lab?  
5 A Uh-huh, yes.  
6 Q Okay. And what did you do when you worked inside the  
7 lab?  
8 A Well, you know, it was a long career, so it started  
9 off as just bucket chemistry, mixing and shaking and  
10 extracting and preparing samples so they could be  
11 analyzed by different types of analytical techniques.  
12 We don't need to go into a lot of detail --  
13 Q Sure.  
14 A -- on those, I don't think. And then eventually I  
15 moved into a management role and, you know, I had  
16 less hands-on analytical chemistry and more  
17 management of people, and that's just how things  
18 progressed.  
19 Q And so by the -- is it fair to say by the time you  
20 made your way to Physicians Choice you had experience  
21 physically working in a lab; is that fair?  
22 A Yes.  
23 Q You had experience managing people that worked for a  
24 lab?  
25 A Yes.

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1 Q And you had experience with obtaining lab equipment?  
2 A Yes.  
3 Q Setting up a lab?  
4 A Yes.  
5 Q Okay.  
6 A Writing SOPs, sales.  
7 Q Okay.  
8 A Everything.  
9 Q Okay. Got you. All right. So let's just wrap back  
10 around to where we were. How did you first come into  
11 contact with anyone that worked at Physicians Choice?  
12 A Well, like I said, I was working for Quantum  
13 Analytics. Our -- our business model was to -- we  
14 were a distributor for a large company called Agilent  
15 Technologies, a spinoff of HP. Agilent Technologies  
16 was HP's analytical arm. So they made instruments  
17 like gas chromatographs and liquid chromatographs and  
18 mass spectrometers.  
19 What Physicians Choice needed was a mass  
20 spectrometer, and the reason that they were brought  
21 to me through an Agilent Technologies salesperson was  
22 that Quantum Analytics provides leasing in addition  
23 to instrument sales.  
24 Q Okay.  
25 A So it was a startup company. It needed access to

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1 capital. Quantum Analytics would take the risk on a  
2 startup because they could -- they knew they could  
3 take that equipment back in and get rid of it on the  
4 secondary market, so --  
5 Q Okay.  
6 A -- that's how I got involved with it.  
7 Q And who -- who was the person that approached you  
8 first on behalf of Physicians Choice?  
9 A I believe it was Michael Cox of Agilent Technologies.  
10 Q And did he ultimately introduce you to some people  
11 over at Physicians Choice?  
12 A Yes.  
13 Q Okay. And who were you introduced to at that time?  
14 Who was --  
15 A Phil.  
16 Q Okay. Just Phil?  
17 A Phil was the first contact, yes.  
18 Q Okay. And talk to me about what happened from then.  
19 What did you do as far as the mass --  
20 A Well, I sold them the equipment, and I realized  
21 quickly that they didn't have the technical expertise  
22 to set the equipment up. So I contracted -- they  
23 contracted me to manage the process of setting up the  
24 tests that they wanted to run.  
25 Q Okay. And talk to me about how that went from a

1 30,000-foot view. I don't need the nitty-gritty.  
2 A It went slower than they wanted, but, you know, from  
3 the standpoint of what we did and accomplished, it  
4 worked -- it went fine. We had a very robust method  
5 for analyzing opiates and other analgesics, and we  
6 were using cutting edge technology to do it, and, you  
7 know, modeling off of other companies that had done  
8 it. We weren't doing anything novel, but we were  
9 doing things that were efficient.  
10 Q And you said that was around 2009 when you came  
11 onboard as kind of a consultant for Physicians  
12 Choice?  
13 A That's right. So, yeah, just to finish that train of  
14 thought --  
15 Q Yeah.  
16 A -- so I -- I was contracted in 2009. By September of  
17 2009, we pretty much were ready to go to market. So  
18 it took nine months. And at that point somewhere in  
19 that late 2009, early 2010, I realized that I wasn't  
20 going to get my -- all of my bonus for the work that  
21 they had contracted me to do, and we ended up talking  
22 about me taking an investment position in the  
23 company.  
24 So I did. I think it was four percent to  
25 start with. Eventually that climbed up to -- I don't

1 know -- six or seven or ten percent, something like  
2 that. And that's how I got involved with all of the  
3 people at Physicians Choice.  
4 Q Okay. And so walk me through. In 2009, you said  
5 initially you were introduced to Phil McHugh. Who  
6 else was working for Physicians Choice at that time  
7 during the startup phase, that nine months?  
8 A Physicians Choice was -- was the three owners, Phil,  
9 Doug Smith, Marcus Sowinski, and one of Doug's  
10 associates. I can't remember his name, but that was  
11 Physicians Choice.  
12 Q Okay. And that's during the startup phase?  
13 A During that month -- that year of 2009, yeah.  
14 Q Okay.  
15 A And Phil hired people to work in the lab. So, I  
16 mean, Phil was the -- the driving force of Physicians  
17 Choice during the early years.  
18 Q Okay.  
19 A He managed the people and, you know, I was more  
20 hands-off at that time. I was really just technical  
21 consultant expert.  
22 Q Okay. And at some point did your role change from  
23 kind of advisor/technical expert to --  
24 A In 2011.  
25 Q Okay.

1 A In 2011 -- oh, I'm sorry --  
2 Q No, no --  
3 A -- I stepped on you.  
4 Q -- that's all right. Go ahead.  
5 A In 2011, I want to say November of 2011, I quit my  
6 day job and went to work for Physicians Choice full  
7 time as an executive level position.  
8 Q Okay.  
9 A And I can't remember the exact title, but -- yeah.  
10 Q And why did you decide to do that?  
11 A Well, the company was doing well, for one thing. For  
12 another, the laboratory that I was working with at  
13 the time -- I had gone back to a company called  
14 Columbia Analytical Services to help with the --  
15 manage the chemistry side of the Gulf Oil spill.  
16 They sold that company, and I had to make a  
17 choice whether to go with the new owner or go, you  
18 know, do something else, and Physicians Choice was  
19 doing very well in 2011, and it seemed like the right  
20 move was to just walk away from Columbia Analytical  
21 Services and go with, you know, put my effort into  
22 helping to make Physicians Choice a better company.  
23 Q Got you. And talk to me a little bit about the  
24 executives that worked for Physicians Choice back in  
25 2011 when you kind of joined on that executive team.

1 A So the key member of the management or the operations  
2 team was Mark -- Mark. I'm going to draw a blank --  
3 Mark Roth. Mark Roth was the key -- key member of  
4 the operations team. He kind of put all of the nuts  
5 and bolts together, I guess. So the first thing I  
6 did was I worked with him to start to expand the  
7 capabilities of the business --  
8 Q Okay.  
9 A -- the company.  
10 Q And what do you mean by that?  
11 A So, you know, with any startup you're kind of shoe-  
12 stringing it for a while. By 2011, we weren't  
13 shoe-stringing it anymore, but there was no  
14 management -- really, the management guidance was --  
15 was -- needed to be beefed up, and that's the role I  
16 played when I came in.  
17 I took -- I took over basically all of  
18 operations, and Mark ended up reporting to me  
19 ultimately. Phil took over sales, and Marcus  
20 Sowinski was starting to take over the  
21 regulatory/legal aspect of running a clinical  
22 chemistry laboratory.  
23 Q Got you. And you said that was --  
24 A In healthcare.  
25 Q Yeah. That was around 2011 --

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1 A Yeah.

2 Q -- when you --

3 A Kind of late 2011 that all worked itself out.

4 Q Okay. And at one point in time did your role change  
5 or title change to CEO of the company?

6 A That was years later. We were a three-headed  
7 president. Three-headed monster, I called it,  
8 because we all had the president title, all three of  
9 us, Phil, myself, and Marcus Sowinski, even though we  
10 were doing those roles the way I explained it  
11 earlier, but we were each titled president, and  
12 eventually that shifted when -- really, when we  
13 started to look for a buyer.

14 We were thinking, okay, we're going to make  
15 some investments here to make us, you know, better, a  
16 better target for maybe a LabCorp or somebody, you  
17 know, or anybody -- we didn't care who we really  
18 ended up selling to. So that was probably 2014-ish,  
19 maybe, '14, '15. Yeah, probably '14. Or maybe --  
20 yeah, late '13 or '14, 2014, when we started to add  
21 more structure.

22 And by that time we had Paul Schmitt working  
23 full time. He was our -- started as my financial --  
24 you know, finance guy that I could bring in and help  
25 with accounting and bookkeeping and all of this

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1 stuff. By that time we had brought him on full time.

2 Alan Campbell had come in. He was working  
3 full time as -- as our regulatory guy. And so, yeah,  
4 so then I got the CEO title. And by that time Phil  
5 and Marcus had kind of backed out of the company as  
6 well. They weren't really -- they weren't really  
7 actively in management anymore. Marcus first and  
8 then eventually Phil.

9 Q Got you. Backing up to late 2011 just for a moment,  
10 when you were head of operations talk to me about  
11 some of the things that you did to better organize  
12 the company so it could achieve its goals.

13 A Well, there's really two fronts. One was just on  
14 the -- on the -- on the technology side. I knew the  
15 equipment. I knew mass spectrometers from my  
16 previous employment, and we hired a PhD chemist,  
17 Brent Dixon, to kind of really take the testing to  
18 the next level.

19 His background was mass spectrometry, and  
20 very good at it, a very good method development  
21 person, and he took the method that I ended up  
22 ultimately created back in 2009 and took -- just took  
23 it to the next level, and I kind of gave him, you  
24 know, the over -- I was in the position of overseeing  
25 all of that. And then on the other side was Mark

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1 Roth, who was running the operation.

2 So we had this division of here's all of the  
3 technical stuff. This is where the testing gets  
4 done. This is how we manage it. This is how we  
5 process the samples. This is how we get reports back  
6 to doctors. This is -- so that's kind of the  
7 structure that we had, and I was overseeing that.

8 As CEO, I also had Paul Schmitt working --  
9 you know, he was all finance and sales. By that time  
10 we had kind of made a dumb decision -- you know, you  
11 don't do everything right, right? So it was kind of  
12 a dumb decision, but we went and hired ninety  
13 salespeople, with the idea that that would make us  
14 more marketable.

15 Q Uh-huh.

16 A Because we make the investment in the sales force, we  
17 train the sales force, and then we sell the company  
18 and we've got that trained sales force.

19 Q Sure.

20 A So back to the structure, though, Paul was over that,  
21 and then Alan was over all of the regulatory/  
22 legal/compliance, all of the compliance stuff. And  
23 then we hired a junior lawyer, Meg Wood, who did  
24 contracts, worked for Alan, and we hired another  
25 lawyer that had -- I think he worked -- yeah, he

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1 worked for LabCorp, so he had experience with buying  
2 and selling companies and --

3 Q Got you.

4 A -- due diligence of companies. So, anyway, your  
5 question was what did I do. That's what I did. I  
6 built that structure.

7 Q Okay, great. And let's just stick on the kind of  
8 legal and compliance aspect --

9 A Sure.

10 Q -- for a moment. So from when you arrived at the  
11 company in 2009 through the date that it closed, did  
12 Physicians Choice's legal and compliance needs, did  
13 those kind of evolve and change over time?

14 A Oh, yeah. Yeah. I mean --

15 Q Talk to me a little bit about that.

16 A -- it started from, like I said, a shoestring. You  
17 have one person doing everything. You know, it was  
18 -- it was hard enough just to try to get a COLA  
19 license to just put up on the wall. So obviously,  
20 you know, when you start that's how things go.

21 By the time -- by the time 2015 rolled  
22 around, which is when -- I think that's the first  
23 time the government actually contacted us, we had a  
24 robust compliance department. Very robust. In fact,  
25 the sales team hated them. I mean, literally hated



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1           **THE WITNESS:** Hi.  
2           **MR. JOHNSON:** My name is Seth Johnson, and  
3 I'm the Assistant United States Attorney representing  
4 the United States in this case. Do you understand  
5 that?  
6           **THE WITNESS:** Uh-huh, yes.  
7           **MR. JOHNSON:** Thanks. And same rules apply  
8 as to the depo.  
9 **CROSS-EXAMINATION,**  
10 **QUESTIONS BY MR. JOHNSON:**  
11 Q But, first, I want to -- is it fair to say you were  
12 one of the operations guys?  
13 A Yes.  
14 Q And since I've got you here and you were one of the  
15 operations guys, I want to talk a little bit about  
16 just the operations of PCLS generally. It was  
17 involved in the business of urine drug testing,  
18 right?  
19 A Yes.  
20 Q Anything else?  
21 A Yes.  
22 Q What?  
23 A The genetic -- enzymatic genetic testing for  
24 metabolic, you know, how you metabolize different  
25 drugs. We had a blood division. We were doing blood

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1 chemistries. We had a women's health division. We  
2 did pap smears and things like that.  
3 Q So testing, generally?  
4 A Yes, clinical testing.  
5 Q Do you have an estimate of how much of PCLS's  
6 business was from the urine drug testing versus the  
7 other components you mentioned?  
8 A Well, at -- at one point genetic testing was about  
9 ten percent of our -- of our income, which means  
10 urine would have been ninety percent of our income.  
11 Q So fair to say primarily urine drug testing business?  
12 A Uh-huh.  
13 Q Is that a "yes"?  
14 A Yes.  
15 Q Thank you. What type of facility did PCLS have to  
16 conduct that urine drug testing?  
17 A We had a laboratory.  
18 Q Could you describe the laboratory for me?  
19 A There was -- well, we had two laboratories. We had a  
20 laboratory in Charlotte and then we moved to a bigger  
21 laboratory in Rock Hill. So to describe it, it's --  
22 Q Well, I'm asking --  
23 A -- a very -- it's a lab. I mean, there's --  
24 obviously there's offices for the people to work in  
25 and then there's lab space, benchtop space for your

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1 instruments and your prep devices and all of that  
2 stuff that you need in order to process samples --  
3 Q Sure.  
4 A -- which were located --  
5 Q And I'm just trying to -- if I was a member of the  
6 jury, I'm just trying to get a general sense of kind  
7 of what that lab looked like, how big it was, what  
8 types of machines they had. You know, not where  
9 every wall socket is --  
10 A Right.  
11 Q -- but like let's take the Charlotte lab --  
12 A Okay.  
13 Q -- or the smaller lab in Charlotte first.  
14 A Okay.  
15 Q Like, you know, how many machines were there? How  
16 big was it? That -- just give me an idea.  
17 A It was -- I think it was 11,000 square feet, but I'm  
18 not positive. How many machines were there? We  
19 probably had as many as six or eight, maybe ten. I  
20 don't know. I don't remember. Somewhere in that  
21 ballpark. Ten -- ten or so.  
22 Q And it's not a memory test. I'm just trying to  
23 get --  
24 A Yeah.  
25 Q -- a general feel.

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1 A I know.  
2 Q What about the Rock Hill lab?  
3 A That was built -- that was 100,000 square feet. It  
4 was built for -- I think I said four hundred people.  
5 I think I told you that was four hundred people. So  
6 it was -- obviously, it was much bigger. And we had  
7 -- I think we had as many as fifty instruments at one  
8 time, and then we had an entire -- that was half --  
9 urine was half of the building.  
10 The rest of the building was -- let me back  
11 up. Urine was half of the lab space, the technical  
12 lab space. The building was probably 50,000 square  
13 feet of -- of lab space, 50,000 square feet of admin  
14 and -- administrative and that type of stuff. Then  
15 you take the lab space and divide it in half again.  
16 Fifty percent of it was urine, fifty percent of it  
17 was blood, genetics.  
18 We had a -- kind of a division that just  
19 basically would look out and say, okay, what  
20 technologies do we want to invest in, let's make that  
21 investment today. So like we bought the assets of  
22 Predictive Biosciences, and we were trying to  
23 re-commercialize a urine genetic test that would help  
24 doctors understand what the recurrence rate of  
25 bladder cancer is.

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1 different techniques to get those drugs.  
2 So some may go through the AU400 or some may  
3 go through an ELISA test. Some -- I think at one  
4 point we were using -- we were using electrophoresis  
5 for isomer determination. There's a lot of -- you  
6 get a lot of requests, and it's hard to do it all in  
7 one -- one analysis.  
8 Q You mentioned an ELISA test, I believe?  
9 A Uh-huh.  
10 Q What is that?  
11 A It's a -- it is a -- pretty much you -- you react the  
12 target compound with another chemical or could be an  
13 antibody, but that -- if the drug is there it  
14 triggers a light response. The light response is  
15 measured, and then that's how you quantify the --  
16 quantify the presence or absence of the drug.  
17 Q Are you familiar with the terms qualitative versus  
18 quantitative testing?  
19 A Yes.  
20 Q So that would be like qualitative testing, right?  
21 A ELISA could be quantitative, but usually it's going  
22 to be qualitative.  
23 Q What about the electrophoresis?  
24 A Again, it could be qualitative or quantitative.  
25 Q And what is that, just generally?

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1 A So you -- you have a bed of resin material or a  
2 column of resin material. You put your drug on it or  
3 you put your sample on it, and you apply a current,  
4 and compounds are going to move through that resin at  
5 different rates and separate, and then you can --  
6 what we did was once we separated them on the  
7 electrophoresis bed we funneled it into or channeled  
8 it into a mass spectrometer to identify the compound  
9 and quantify it. I don't know that we had to  
10 quantify. We definitely identified the compound that  
11 way.  
12 Q So that's a method that would be used kind of prior  
13 to the mass spectrometer?  
14 A Uh-huh.  
15 Q For confirmation testing, did PCLS use the mass  
16 spectrometers?  
17 A Uh-huh.  
18 Q Did PCLS --  
19 A Yes.  
20 Q Did PCLS use any other method for confirmation  
21 testing?  
22 A I don't know. I'm not sure.  
23 Q To me, it wouldn't make sense if a doctor used a --  
24 you know, a test cup in the -- in his lab for PCLS to  
25 also use a dipstick test, correct?

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1 MR. VILLMER: Objection to the --  
2 A Why would we do --  
3 MR. VILLMER: -- objection to the form. Go  
4 ahead.  
5 A Why would -- I don't understand why you think that.  
6 You're -- you're -- I mean, I don't understand the  
7 question, I guess.  
8 Q (MR. JOHNSON CONTINUING) Sure. So --  
9 A If you're --  
10 Q -- what would --  
11 A -- just replicating the test you're not doing  
12 anything.  
13 Q That was the point I was driving at. So doctors do  
14 point of care testing as well, right?  
15 A Uh-huh.  
16 Q And they can use methods like dipstick testing,  
17 correct?  
18 A Uh-huh.  
19 Q And they can use desktop analyzers?  
20 A Yes.  
21 Q And so if a sample was sent to PCLS after it was  
22 tested by some other method that a doctor could use  
23 at the point of care, it wouldn't make sense for PCLS  
24 to just test it the same way, right?  
25 A Right.

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1 MR. VILLMER: Objection to the form.  
2 Q (MR. JOHNSON CONTINUING) And then so the testing  
3 that PCLS would do on the confirmation samples would  
4 be the mass spectrometer, correct?  
5 A Yes.  
6 Q Were you ever involved with providing any doctors  
7 desktop analyzers?  
8 A No.  
9 Q Were you ever involved with making a down payment so  
10 that any doctors could obtain a desktop analyzer?  
11 A No.  
12 Q Are you aware of PCLS or anyone at PCLS ever  
13 providing doctors with desktop analyzers?  
14 A No.  
15 Q Did you -- were you ever involved with paying  
16 expenses for a doctor's lab?  
17 A No.  
18 Q Are you aware of anyone at PCLS doing so?  
19 A No.  
20 Q You think it would be improper if they did so?  
21 A Yes.  
22 MR. VILLMER: Objection.  
23 Q (MR. JOHNSON CONTINUING) If someone at PCLS made a  
24 down payment on an analyzer for a doctor, do you  
25 think that would be improper?



1 MR. VILLMER: Objection to the form.  
2 A Yes.  
3 Q (MR. JOHNSON CONTINUING) If PCLS procured analyzers  
4 for doctors, do you think that would be improper?  
5 MR. VILLMER: Objection to form.  
6 A Yes.  
7 Q (MR. JOHNSON CONTINUING) Are you familiar with a  
8 Dr. John Johnson, who was a pain management doctor in  
9 Pennsylvania?  
10 A I know the name, but I'm not familiar with him  
11 personally.  
12 Q How do you know the name?  
13 A Just through business communications.  
14 Q And let me just back up more maybe globally. What  
15 was your, I guess, involvement at a general level  
16 with any particular doctor or client? Did you  
17 have --  
18 A Almost -- almost --  
19 Q -- correspondence with them or were you mainly doing  
20 operations?  
21 A No, almost no -- almost nothing.  
22 Q That's something that would have been done --  
23 A The name like --  
24 Q -- by the sales team?  
25 A -- Johnson's name or -- I mean, there are doctors

1 that -- that we would talk about because, you know,  
2 you have sales targets. I mean, that's what you  
3 have. So those names would come up in meetings, but  
4 I personally wasn't -- that wasn't part of my -- I  
5 delegated that to Paul Schmitt and to Phil, when Phil  
6 was still with the company, you know, working with  
7 the company.  
8 So, you know, we would discuss names, but me  
9 personally, I didn't have interaction with any of  
10 them except for when we fired -- fired one of our  
11 customers, United Oral Fluid, which happened, I  
12 think, probably real -- real close to when I came on  
13 the company in February of 2011. We felt that -- we  
14 felt that Bill Hughes was a risk, that his business  
15 model was not -- I should say his business model was  
16 a risk for us to be involved in.  
17 So we fired them, and we made an effort to  
18 obtain business from the doctors that were sending  
19 samples to Bill Hughes. We had a call-in campaign to  
20 try to get them to switch to PCLS, and in that case,  
21 I did talk to a few doctors. I was actually one of  
22 the -- we divided the list up and, you know, we  
23 had -- we had each of us calling maybe, I don't know,  
24 a hundred doctors or twenty doctors -- or whatever it  
25 was, we divided the list. So I had a part of the

1 list was part of my responsibility.  
2 Q Other than that --  
3 A That's it.  
4 Q -- interfacing with doctors wasn't part of your job  
5 description?  
6 A No.  
7 Q Okay. And I just -- I want to go back to --  
8 A And, again, I should caveat it again. We fired  
9 another customer out of Texas, Andrew Hillman's  
10 group. I can't remember the name of them. And  
11 similar situation with United Oral Fluids. We  
12 divided the list of doctor customers up, and we -- we  
13 did go out with salespeople and make calls to  
14 doctors' offices. We -- when I say "we," I mean the  
15 management team.  
16 Q So it sounds like at certain points, you know, if a  
17 relationship with a client broke down, the management  
18 team would try and, I guess, retain the business?  
19 A Yeah.  
20 Q And that was the extent -- and when that would  
21 happen, that's kind of when you got involved --  
22 A Yes.  
23 Q -- with customers? But other than that, wasn't part  
24 of your job description?  
25 A That's true.

1 Q What about a Dr. John Nichols, who is a pain  
2 management doctor in Ohio?  
3 A I know Dr. Nichols through the United Oral Fluid  
4 campaign that I discussed earlier, and that's really  
5 my only -- my only knowledge of -- and I think I  
6 talked to him on the phone once. Was he in Cleveland  
7 or somewhere in Ohio?  
8 Q Cleveland, yep.  
9 A Yeah, I talked to him on the phone once.  
10 Q Did you have any involvement in paying expenses for  
11 his lab?  
12 A No.  
13 Q And no knowledge that that was occurring, correct?  
14 MR. VILLMER: Objection to the form.  
15 A I don't --  
16 Q (MR. JOHNSON CONTINUING) If that was occurring, no  
17 knowledge that it was?  
18 A You mean -- clarify your question for me. You  
19 mean --  
20 Q If --  
21 A -- were -- were payments being made? Is that what  
22 you're saying?  
23 Q If they were being paid --  
24 A I had no knowledge.  
25 Q -- you had no knowledge?

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1 give a report. I mean, my understanding is Phil  
2 sought legal advice prior to doing the loan.  
3 Q Have you ever seen anything in writing regarding  
4 that?  
5 A Like the loan itself, the loan documents, or writing  
6 that Phil received legal advice?  
7 Q The latter.  
8 A No.  
9 Q What about a Dr. Jay Achandran? Are you familiar  
10 with him?  
11 A Only by name. Was there a loan done to him, too?  
12 Q There was.  
13 A Okay. His name came up in the debrief of the Florete  
14 loan. So that's one -- I don't know when the -- when  
15 the management team, when other members of the  
16 management team found out about that loan, but that's  
17 when I found out about that loan.  
18 Q So same questions. You weren't involved with the  
19 loan when it was made?  
20 A No.  
21 Q Okay. Didn't know about it when it was made?  
22 A No.  
23 Q If there was legal advice sought, you weren't  
24 involved in doing that?  
25 A No.

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1 MR. VILLMER: Objection to the form.  
2 Q (MR. JOHNSON CONTINUING) So just to kind of close  
3 the loop on this, any knowledge you have about the  
4 Jay Achandran or Florete loans is all after the fact  
5 when it came to light at PCLS, correct?  
6 MR. VILLMER: Objection to the form.  
7 A Correct.  
8 Q (MR. JOHNSON CONTINUING) You mentioned that you  
9 thought Jane Pine Wood recommended a repayment to the  
10 government, correct?  
11 A Yes.  
12 Q Were you involved in any repayment to the government?  
13 A No.  
14 Q Do you know who would have been?  
15 A Paul Schmitt and Alan Campbell.  
16 Q If any such repayment was made, do you know where it  
17 would have come from, like such as what bank account?  
18 A No.  
19 Q Do you have any knowledge about the amount of any  
20 such purported repayment?  
21 A No.  
22 Q Do you know when any such repayment would have been  
23 made?  
24 A Not off the top of my head.  
25 Q Have you ever seen any type of written confirmation

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1 regarding any repayment related to the Florete or Jay  
2 Achandran loans?  
3 A No.  
4 Q I want to go back to Bill Hughes' company. You also  
5 mentioned that they were a high risk to be involved  
6 with?  
7 A In my opinion.  
8 Q Yeah. What's the basis for your opinion that Bill  
9 Hughes' company was a high risk for PCLS to be  
10 involved in?  
11 A Well, I don't know exactly what Bill Hughes'  
12 company's business model was. I'm sure I did know at  
13 some point, I did have insight into that, but I can't  
14 pull it out right now, but it seemed like a risky  
15 model for two reasons. One, he was generating a lot  
16 of samples, and, you know, just that worries me when  
17 I see one -- one source generating tons of samples.  
18 The other thing is I saw no protection that  
19 we could maintain our technical approach to testing  
20 Oral Fluid samples in the long run. We knew that one  
21 of our salespeople had already left and gone to work  
22 for Bill Hughes. It seemed like a short step to  
23 where he would just cut us off, cut us out, you know,  
24 not use us anymore and develop his own test  
25 procedures.

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1 So that seemed like a business risk. So  
2 when you put the compliance risk together and the  
3 business -- business risk together, I just -- I just,  
4 you know, thought the right thing to do was to fire  
5 the customer.  
6 Q Who was that salesperson that left?  
7 A I don't -- Andrew somebody. I don't remember.  
8 Q You mentioned earlier that there was conflict between  
9 compliance and sales; is that fair?  
10 A Uh-huh.  
11 Q Could you expound on that a little bit for me?  
12 A Sales wanted free rein to do whatever they needed to  
13 do to make a sale, and compliance wanted to vet it  
14 against what was allowable in healthcare. So sales  
15 would get upset when that process took longer than a  
16 day or two days. That's a hy- -- that's hyperbole,  
17 but that's where the conflict arose, is that  
18 compliance needed more time to vet than what sales  
19 wanted to give.  
20 Q I believe you testified, too, that, you know, kind of  
21 the robustness of the compliance department grew over  
22 time --  
23 A Uh-huh.  
24 Q -- as PCLS went on, right?  
25 A Yes.

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1 Q Do you have a recollection of about when that  
2 friction between sales and compliance started?  
3 A Well, by the time we had moved into Rock Hill, which  
4 I think was 2013, I think it was -- I can't remember  
5 if it's early or mid 2013, but, anyway, by the time  
6 we made that move our compliance department was  
7 starting to get pretty beefy, like they didn't have  
8 enough space in Charlotte.  
9 So, I mean, it's just, you know, bad memory,  
10 but -- or inconsistent memory, maybe, but it seems  
11 like around 2013 things would -- and maybe we were  
12 hiring more salespeople then, too, so the sales  
13 department was getting bigger, the compliance  
14 department was getting bigger. Compliance was  
15 sticking their fingers in deeper into -- into the  
16 operation. So, yeah, probably 2013-ish.  
17 Q You mentioned that yourself, Doug Smith, Sowinski,  
18 and McHugh all had ownership interest in PCLS?  
19 A Yes.  
20 Q Did anyone else have an ownership interest --  
21 A No.  
22 Q -- in the company? Do you know what the percentage  
23 apportionment of those ownership interests were?  
24 A Ballpark.  
25 Q Yeah. Just rough ballpark.

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1 A Smith was 47-ish, McHugh was 24, maybe, Sowinski was  
2 17, I was nine -- eventually nine. Started at four.  
3 If you add all of that up and come up with somewhere  
4 plus or minus five percentage points -- I don't know.  
5 Q I'm a lawyer, so --  
6 A I don't know. You can add it up in your head and see  
7 where that brings you, but something like that.  
8 Q I doubt it would be accurate if I did, but just  
9 generally, Phil McHugh had the second largest --  
10 A Yes.  
11 Q -- ownership percentage?  
12 A Yes.  
13 Q And that remained constant throughout PCLS's life?  
14 A Doug's -- Doug's share changed and my share changed  
15 as we made a -- towards the end we were trying to  
16 hang on to bring you guys to a settlement, actually,  
17 is why we were trying to hang on, but -- so I put a  
18 bunch of money back into the business, and Doug gave  
19 up some shares because he didn't put anything in.  
20 Q When you went from four percent to nine percent or  
21 so --  
22 A Uh-huh.  
23 Q -- whose, I guess, share did that come from?  
24 A There was a set aside of five percent. When they set  
25 up the -- when those three set up the structure, they

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1 had a set aside of five percent. So it didn't come  
2 out of anybody in particular. I guess it came out of  
3 everybody equally is what it boils down to.  
4 Q So the set aside?  
5 A Yeah.  
6 Q You mentioned you attended quarterly board meetings.  
7 Did PCLS keep board minutes?  
8 A Uh-huh, yes.  
9 Q Are you familiar with Manoj Kumar?  
10 A Yes.  
11 Q Are you familiar with the circumstances of how he  
12 left PCLS?  
13 MR. VILLMER: Objection to the form.  
14 A Yes.  
15 Q (MR. JOHNSON CONTINUING) Could you tell me about  
16 those?  
17 A Manoj had a lot of different businesses going on. We  
18 made him an employee probably in 2012-ish. Yeah,  
19 probably in 2012 he became an employee of PCLS, but  
20 he also had other businesses that he was working on,  
21 and I'd say that Manoj was a -- you know, he decided  
22 to leave the company mostly out of frustration.  
23 You know, our organization structure  
24 changed. Phil had backed out, wasn't -- and Phil and  
25 Manoj were very close. Phil had backed out. Paul

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1 Schmitt had taken over the salespeople. Manoj was  
2 working with the sales team. So it just got dicey, I  
3 guess, and he decided to back out. There was a  
4 separation agreement. I can't remember what it was,  
5 but I know there was a separation agreement.  
6 He might have had a phantom -- there were --  
7 there were a couple of shares of phantom -- phantom  
8 stock that if we had ever made a sale that, you know,  
9 some key players would have gotten a small piece of  
10 the action there. So, you know, I don't know the  
11 details, but that's essentially the nuts and bolts.  
12 Q When he separated from PCLS, did PCLS purchase one of  
13 his companies?  
14 A I don't recall that.  
15 Q A company called CSS; do you remember that?  
16 A I remember CSS, but I don't remember purchasing it.  
17 Q Do you remember having any discussions about whether  
18 to purchase it?  
19 A No.  
20 Q Do you know whether Mr. Kumar continued to manage  
21 physicians' practices while he was employed at PCLS?  
22 MR. VILLMER: Objection to form.  
23 A No.  
24 Q (MR. JOHNSON CONTINUING) If he did, do you think  
25 that would be improper?

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1 would like to. Would you like to read and sign or  
2 would you like to waive?  
3 **THE WITNESS:** I guess I should read and  
4 sign.  
5 **MR. CAUDILL:** Okay.  
6  
7 AND FURTHER DEPONENT SAITH NOT.  
8  
9 THIS DEPOSITION TO BE READ AND SIGNED BY JOSEPH WIEGEL.

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1 **DEPONENT'S CERTIFICATION**  
2  
3  
4 I, JOSEPH WIEGEL, DEPONENT HEREIN, DO HEREBY  
5 CERTIFY THAT THE ABOVE AND FOREGOING TRANSCRIPT IS A FULL,  
6 TRUE AND COMPLETE COPY OF PROCEEDINGS WHICH TOOK PLACE ON  
7 THE 24TH DAY OF SEPTEMBER, 2020, AT THE LAW OFFICES OF WOODS  
8 & WOODS, 208 N.W. FOURTH STREET, EVANSVILLE, VANDERBURGH  
9 COUNTY, INDIANA. I FURTHER CERTIFY THAT ANY CHANGES AND/OR  
10 CORRECTIONS, IF ANY, HAVE BEEN NOTED ON THE FORM ATTACHED AS  
11 THE LAST PAGE OF THE TRANSCRIPT.  
12 IN VERIFICATION AND CERTIFICATION THEREOF, I  
13 HAVE HEREUNTO PLACED MY SIGNATURE ON THIS THE DAY OF  
14 , 2020.  
15  
16 **JOSEPH WIEGEL**  
17  
18 SUBSCRIBED AND SWORN TO BEFORE ME, A NOTARY  
19 PUBLIC, ON THIS DAY OF , 2020.  
20  
21 **NOTARY PUBLIC**  
22 MY COMMISSION EXPIRES:  
23 COUNTY OF:  
24  
25

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1 STATE OF INDIANA )  
2 COUNTY OF VANDERBURGH ) ss:  
3 I, AMY L. HOOTEN, CSR, RMR, A NOTARY PUBLIC AT LARGE  
4 IN AND FOR THE STATE OF INDIANA, DO HEREBY CERTIFY:  
5 THAT THE WITNESS HEREIN, JOSEPH WIEGEL, WAS FIRST  
6 DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING  
7 BUT THE TRUTH IN THE FOREGOING DEPOSITION;  
8 THAT I THEN STENOGRAPHICALLY AND ELECTRONICALLY  
9 RECORDED THE TESTIMONY OF THIS WITNESS AND THAT THE  
10 TYPEWRITTEN TRANSCRIPT ABOVE IS A TRUE RECORD OF THE  
11 TESTIMONY GIVEN; THAT SAID DEPONENT SUBSCRIBED HIS SIGNATURE  
12 TO HIS DEPOSITION AFTER THE SAME HAD BEEN CAREFULLY READ  
13 OVER BY HIM;  
14 THAT I ALSO RECORDED AND TRANSCRIBED ANY AND ALL  
15 OBJECTIONS MADE BY COUNSEL AND THE REASONS THEREFOR; AND  
16 THAT I AM NOT A RELATIVE OR EMPLOYEE OR ATTORNEY OR  
17 COUNSEL OF ANY OF THE PARTIES, NOR A RELATIVE OR EMPLOYEE OF  
18 SUCH ATTORNEY OR COUNSEL, NOR AM I FINANCIALLY INTERESTED IN  
19 THIS ACTION.  
20 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND  
21 AFFIXED MY NOTARIAL SEAL ON THIS DAY OF 2020.  
22  
23 AMY L. HOOTEN, CSR, RMR, NOTARY PUBLIC  
24 MY COMMISSION EXPIRES:  
25 JUNE 24, 2023

1 **ERRATA SHEET**  
2 **WITNESS: JOSEPH WIEGEL**  
3 After having read my deposition, I wish to make the  
4 following changes:  
5 Page \_\_\_\_ Line \_\_\_\_  
6 Change \_\_\_\_\_  
7 To \_\_\_\_\_  
8 Reason for Change \_\_\_\_\_  
9 Page \_\_\_\_ Line \_\_\_\_  
10 Change \_\_\_\_\_  
11 To \_\_\_\_\_  
12 Reason for Change \_\_\_\_\_  
13 Page \_\_\_\_ Line \_\_\_\_  
14 Change \_\_\_\_\_  
15 To \_\_\_\_\_  
16 Reason for Change \_\_\_\_\_  
17 Page \_\_\_\_ Line \_\_\_\_  
18 Change \_\_\_\_\_  
19 To \_\_\_\_\_  
20 Reason for Change \_\_\_\_\_  
21 Page \_\_\_\_ Line \_\_\_\_  
22 Change \_\_\_\_\_  
23 To \_\_\_\_\_  
24 Reason for Change \_\_\_\_\_  
25 I am, therefore, signing my deposition conditioned on the  
fact that the above noted shall be entered upon the  
deposition by the notary public (Signature of Deponent)  
Date: \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL FILE NO. 3:17-CV-37  
(CONSOLIDATED WITH CIVIL FILE NO. 3:17-CV-46)

UNITED STATE OF AMERICA ex rel.	)	
TARYN HARTNETT, and DANA SHOCHED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEPOSITION OF ANNA WINGER
	)	
PHYSICIANS CHOICE LABORATORY	)	
SERVICES, DOUGLAS SMITH, PHILIP	)	
MCHUGH AND MANOJ KUMAR,	)	
	)	
Defendants.	)	

On Thursday, October 29, 2020, commencing at 1:43 p.m.,  
the deposition of Anna Winger was taken via Zoom on behalf of the  
Plaintiffs and was attended by Counsel as follows:  
APPEARANCES:

SETH JOHNSON, ESQ. (by videoconference)  
Assistant United States Attorney  
US Attorney's Office  
227 West Trade Street, Suite 1650  
Charlotte, North Carolina 28202  
on behalf of the Plaintiff

BO CAUDILL, ESQ. (by videoconference)  
MATTHEW M. VILLMER, ESQ. (by videoconference)  
Weaver, Bennett & Bland, PA  
196 North Trade Street  
Matthews, North Carolina 28105  
on behalf of the Defendant Philip McHugh

KAREN H. CHAPMAN, ESQ. (by videoconference)  
Poyner Spruill, LLP  
301 South College Street, Suite 2900  
Charlotte, North Carolina 28202  
on behalf of the Deponent Anna Winger

REPORTED BY: Dee Anna Michaels, CVR-M, CCR  
ASHEVILLE REPORTING SERVICE



1 from a normal conversation. The court reporter  
2 has to transcribe what we're saying. So I will  
3 do my best to try and let you fully answer, if  
4 you'll do your best to kind of let me fully get  
5 my questions out, and that way we have a clean  
6 record. You know, in normal conversation, a  
7 lot of times you anticipate what the person is  
8 going to say and there's a tendency to speak  
9 over each other, and we're all bad for that.  
10 The court reporter, I'm sure, will remind us,  
11 if we start doing a poor job. Fair enough?

12 A Yes.

13 Q At various intervals, either Bo or Ms. Chapman,  
14 your lawyer, may object to the questions I've  
15 asked. Same rules kind of apply. If I ask a  
16 question and they object, you know, let's just  
17 let everyone talk. Unless you are instructed  
18 not to answer by your counsel, you can go ahead  
19 and answer, after the objection.

20 A Okay.

21 Q If you don't understand a question I ask, feel  
22 free to ask me to clarify, and I'll try and do  
23 my best. Okay?

24 A Okay.

25 Q If you don't ask me to clarify a question, I'm

1 going to assume that you understand it. Fair  
2 enough?

3 A Yes.

4 Q And my name is Seth Johnson. I'm an Assistant  
5 United States Attorney. I represent the United  
6 States in a False Claims Act lawsuit against  
7 defendants Physicians Choice Laboratory  
8 Services, Douglas Smith, Philip McHugh and  
9 Manoj Kumar. Do you understand that?

10 A Yes.

11 Q And Physicians Choice Laboratory Services is  
12 often referred to as PCLS for short. If I do  
13 that, do you understand what I mean?

14 A Yes.

15 Q Can you take me through 30,000-foot overview of  
16 your career history as a lawyer?

17 A I attended Vermont Law School. I graduated in  
18 2005. I practiced initially in Montana. I  
19 relocated to North Carolina in 2011, sat for  
20 the North Carolina Bar exam and set up shop in  
21 Hickory, North Carolina. My focus has been  
22 primarily estate planning, with some other  
23 areas of the law that overlap; some real  
24 estate, some business and miscellaneous  
25 matters. But I currently -- well, I have had

1 numerous changes in my firm. I had a partner  
2 initially, Nancy Huegerich. I was solo for  
3 several years, and approximately three years  
4 ago I merged with Jessie Bone, and I have three  
5 partners now in the firm and six support staff.  
6 But we focus on estate planning and elder law,  
7 primarily.

8 Q What's the name of your current firm?

9 A Bone, Winger & Simmons, PLLC.

10 Q And backing up from that, what firm were you at  
11 before this firm?

12 A I began as Huegerich & Winger and later was  
13 Winger Law when I was solo; and now Bone,  
14 Winger & Simmons.

15 Q How long were you at Huegerich & Winger?

16 A I would need to look back. I want to say it  
17 was a couple of years.

18 Q What time period? From what year to what year?

19 A Roughly, 2012 to '14.

20 Q And then from '14 on to when were you at Winger  
21 Law?

22 A Until 2017, but I'm speaking generally. I do  
23 not have the time line.

24 Q Fair enough. I'm just looking for rough  
25 approximations here. You mentioned you focused

1 in estate planning and some of the ancillary  
2 areas to that; fair?

3 A Yes.

4 Q Do you have any other areas of expertise in the  
5 law?

6 A As a solo practitioner, you know, you develop  
7 areas of focus. I would need to know more  
8 specifically what you're interested in.

9 Q Sure. Do you know what the False Claims Act  
10 is?

11 A I know what it is, but that is not an area of  
12 focus for me.

13 Q Have you ever done any legal work, with regard  
14 to the False Claims Act?

15 A I have -- to the extent, you know, that --  
16 well, you're aware of -- you have seen my  
17 understanding, which was, you know, I  
18 recognized the issue and contacted a healthcare  
19 lawyer. So (pause) ---

20 Q So fair to say that you, yourself, don't have  
21 any expertise in the healthcare field?

22 A Generally, that's correct, yes. I have no  
23 special experience in that area.

24 Q Same thing with the False Claims Act?

25 A Correct.

1 Q Same thing with the Anti-Kickback Statute?

2 A Correct.

3 Q Have you read the United States Complaint and

4 Intervention in this case?

5 A I have not read it in its entirety.

6 Q Have you read some of it?

7 A I may have scanned it, but I have -- would not

8 say that I've read it.

9 Q And it's your understanding that Phil McHugh

10 has waived his attorney-client privilege with

11 regards to matters in the United States

12 Complaint and Intervention; correct?

13 BY MS. CHAPMAN:

14 Objection.

15 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

16 Q You can answer.

17 A It's my understanding.

18 Q That is your understanding? Is that a "yes,"

19 Ms. Winger?

20 A This is -- the reason is that I have an

21 attorney is because I'm not a litigator. And

22 so, honestly, I do not know that I understand

23 your question, but I think I understand the

24 question.

25 Q Okay. Sure. And I'll ask it again. You

1 Well, that's not for us to make the decision.

2 She just said that she hasn't read the

3 Complaint, so I don't know that she can make

4 that call.

5 BY MR. CAUDILL:

6 Seth, I would just say that, with respect to

7 the specific areas of liability alleged as

8 against Phil McHugh; that might narrow this

9 issue a little bit and help move things

10 forward. Broadly speaking, the Complaint makes

11 allegations about Phil's relationship with

12 Physicians Choice and some things that

13 Physicians Choice did. And so, maybe if we

14 talk about the specific allegations in the

15 Complaint, as they relate to Phil, we might be

16 able to avoid anymore confusion about that.

17 BY MR. JOHNSON:

18 Sure. And, I mean, I would assume Ms. Winger

19 wouldn't have any relationship to, you know,

20 Doug Smith or anyone else in the Complaint.

21 Fair enough. You know, if something specific

22 comes up, we can address it then.

23 BY MS. CHAPMAN:

24 And I'm not trying to, Seth, obstruct your

25 process here. I just want to make sure because

1 understand that I'm going to be asking you

2 questions today about your attorney-client

3 relationship with Phil McHugh; correct?

4 A Yes.

5 Q And, you know, generally, there is a privilege

6 that attaches with that; correct?

7 A Yes.

8 Q And you understand, to a certain degree, that

9 privilege has been waived by Mr. McHugh who

10 holds the privilege?

11 A Correct.

12 Q And that degree is the matters listed in United

13 States Complaint and Intervention in this case;

14 right?

15 BY MS. CHAPMAN:

16 Objection. I just want to note for the record

17 we sent the letter noting our objection and our

18 understanding of the extent to which Mr. McHugh

19 has waived his attorney-client privilege in our

20 letter dated October 16th that I sent to

21 Katherine Armstrong.

22 BY MR. JOHNSON:

23 Sure. And that's concurrent with what's pled

24 in our Complaint; right?

25 BY MS. CHAPMAN:

1 we only -- we've only been told they consent to

2 or waive the privilege as to those things

3 outlined. So -- and, again, the privilege

4 belongs to Mr. McHugh, so that's Bo's call.

5 BY MR. JOHNSON:

6 Right. My read of your letter is that's kind

7 of synonymous with our theories about ---

8 BY MR. CAUDILL:

9 I think we're all saying the same thing in a

10 different -- in a different way.

11 BY MR. JOHNSON:

12 Fair enough. Attorney depo's are a little

13 different than the normal ones, so before we

14 got started, I just wanted to make sure we're

15 all on the same page here.

16 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

17 Q Ms. Winger, do you know who Dr. John Johnson

18 is?

19 A No.

20 Q Never heard the name before?

21 A Repeat the name.

22 Q Dr. John Johnson? He was a pain management

23 doctor in Western Pennsylvania at Lighthouse

24 Medical.

25 A No.

1 easier to -- for me to address.  
 2 Q Fair enough. Did you ever perform any legal  
 3 work or give any legal advice to Phil McHugh  
 4 related to Manoj Kumar's employment  
 5 relationship with PCLS?  
 6 A No.  
 7 Q Nothing related to whether any type of  
 8 employment relationship with Manoj Kumar would  
 9 violate the AKS?  
 10 A No.  
 11 Q Do you know who Dr. Yunus Shah is?  
 12 A No.  
 13 Q He was with Avicenna Pain Relief in Kentucky.  
 14 Doesn't ring a bell?  
 15 A No.  
 16 Q Fair to say you never performed any legal work  
 17 or gave legal advice to Phil McHugh related to  
 18 Manoj Kumar's management of Dr. Shah's practice  
 19 while employed at PCLS?  
 20 A No.  
 21 Q Do you know who Dr. Gregory Masimore is?  
 22 A No.  
 23 Q He was with Pain Management Solutions in  
 24 Indiana. That doesn't ring a bell?  
 25 A No.

1 closing documents to me to review. And so, my  
 2 role was to review and to advocate on Phil's  
 3 behalf, as we negotiated the terms of that  
 4 loan.  
 5 Q And that was in September to October of 2013;  
 6 correct?  
 7 A That is -- that sounds correct. I believe  
 8 that's in one of your exhibits. I could look  
 9 at the actual ---  
 10 Q Sure. Let's do that. Let's take a look at  
 11 Exhibit 1, which is the original loan document.  
 12 A Okay.  
 13 (PLAINTIFF'S EXHIBIT NO. 1 INTRODUCED)  
 14 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 15 Q If you'll turn to four pages in, you'll see the  
 16 Florete guaranty is dated October 18th, 2013?  
 17 A (Upon review) Uh-huh.  
 18 Q And after that, on what's Bates-labeled PM Page  
 19 9, you'll see the Mortgage and Security  
 20 Agreement is dated October 18th, 2013?  
 21 A Uh-huh.  
 22 Q You were representing Mr. McHugh in his  
 23 personal capacity regarding this loan; correct?  
 24 A Yes. But I believe that Silent Storm was the  
 25 lender.

1 Q Fair to say you didn't perform any legal work  
 2 or give any legal advice to Phil McHugh related  
 3 to Manoj Kumar's management of Dr. Masimore's  
 4 practice, while employed at PCLS?  
 5 A No.  
 6 Q Do you know who Sanker Jayachandran is?  
 7 A I do not, no.  
 8 Q He's a doctor with Confidential Care in  
 9 Indiana. That doesn't ring a bell?  
 10 A No.  
 11 Q Fair to say you didn't perform any legal work  
 12 or give any legal advice to Phil McHugh related  
 13 to a loan made to Dr. Jayachandran?  
 14 A No.  
 15 Q Do you know who Dr. Orlando Florete is?  
 16 A Yes.  
 17 Q And you did perform some legal work and give  
 18 Phil McHugh legal advice related to a loan made  
 19 to Dr. Florete; right?  
 20 A Yes.  
 21 Q Just in general terms, can you tell me what  
 22 that legal work was regarding that loan?  
 23 A Regarding that loan, initially, it -- it came  
 24 to me as a loan. It came from Dr. Orlando  
 25 Florete's attorney, Randy Briley. He sent

1 Q Is Silent Storm one of Phil McHugh's companies?  
 2 A Yes.  
 3 Q Prior to the loan being made in October 2013,  
 4 did you talk to anyone at PCLS, other than  
 5 McHugh?  
 6 A No.  
 7 Q What's your understanding of the terms of the  
 8 October 2013 loan, just generally?  
 9 A Silent Storm agreed to lend, I believe it was,  
 10 \$1.7 million dollars to Aries Medical  
 11 Corporation, I believe IPM may also be a  
 12 borrower, in exchange for a mortgage on some  
 13 real estate owned by those companies, with  
 14 payment terms as laid out in the -- in the  
 15 documents.  
 16 Q The documents in Exhibit 1 are the documents  
 17 related to the October 2013 loan; correct?  
 18 A It appears, yes.  
 19 Q There's a guaranty from Orlando Florete; right?  
 20 A A personal guaranty, yes.  
 21 Q Personal guaranty. There's a Mortgage and  
 22 Security Agreement?  
 23 A Yes.  
 24 Q There's a No Lien and Possession Affidavit?  
 25 That's all on Bates-labeled 24 of the exhibit.



1 A Yes.

2 Q There's a promissory note on Bates Label 26?

3 Is that a "yes"?

4 A Yes.

5 Q And then there's a Security Agreement on Page

6 30?

7 A Yes.

8 Q Any other agreements or documents related to

9 the October 2013 loan to Florete that aren't

10 included in Exhibit 1, that you know of?

11 A The only other agreement, I believe there's a

12 cost agreement that's in one of your exhibits.

13 But that was simply an agreement about who was

14 going to pay certain costs of preparing the

15 closing documents.

16 Q And we'll get to that. But outside of those,

17 you know, that's kind of the universe of the

18 loan documents for the October 2013 loan;

19 correct?

20 A There is also a UCC filing statement and, you

21 know, some of the more -- the maybe ancillary

22 kind of loan documents, in the normal course of

23 business. So I may be missing something, but

24 the main documents are, yes, in your exhibit.

25 Q Let's skip around, actually, because you

1 Q And Exhibit 5 starts with an email from

2 yourself to Travis Guthrie, cc'ing Phil McHugh,

3 on October 31st, 2013; right?

4 A Yes.

5 Q And you attach an invoice for your services

6 rendered on the loan.

7 A It appears so, yes.

8 Q And the second page of Exhibit 5 is your bill;

9 right?

10 A Uh-huh.

11 Q Is this all the work you did in October 2013 --

12 or September to October 2013 on the loan?

13 A Can you restate your question?

14 Q Sure. You sent Travis Guthrie a bill for your

15 work on the Florete loan; correct? And in the

16 bill there are billing entries for various

17 dates; right?

18 A Correct.

19 Q The first starts on September 6, 2013?

20 A Uh-huh.

21 Q And it ends on the loan date of October 18,

22 2013?

23 A Yes.

24 Q The billing entries contained in this invoice,

25 do those accurately reflect your work done

1 mentioned the cost agreement. Can you pull up

2 Exhibit 4?

3 A Sure.

4 (PLAINTIFF'S EXHIBIT NO. 4 INTRODUCED)

5 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

6 Q Is this the cost agreement you were

7 referencing?

8 A Yes.

9 Q Can you tell me what the -- what was agreed to

10 in this cost agreement?

11 A I believe that Dr. Florete agreed to pay the

12 lender's side of the closing costs. Give me

13 just a minute to read.

14 Q Sure.

15 A (Review of document) Yes. I believe it's --

16 the intent of the agreement was for Dr. Florete

17 to cover some of the closing costs.

18 Q That would have included your attorney's fees;

19 correct?

20 A Yes.

21 Q And would you turn to Exhibit 5?

22 (PLAINTIFF'S EXHIBIT NO. 5 INTRODUCED)

23 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

24 Q Do you have that in front of you, Ms. Winger?

25 A I do.

1 during that time period on this loan?

2 A Yes.

3 Q So there wasn't work you were doing that's not

4 included in this invoice; correct?

5 A Do you mean work on other matters or other work

6 on this particular ---

7 Q No, ma'am. Yes, other work on this particular

8 loan.

9 A Typically, when I'm billing, this is -- you

10 know, I send a bill with the entries that

11 reflect the work that I've done. I mean, to

12 the extent that something (pause) ---

13 Q It's not a trick question. I just want to

14 confirm that the bill you sent to Mr. Guthrie

15 contains, you know, an accurate, to the best of

16 your knowledge, recitation of the work that you

17 did on the loan during this time period?

18 A Okay. Yes. And, I'm sorry, I'm smiling

19 because I often -- I do a lot of things that,

20 you know -- you know, that I'm studying that

21 don't make it onto my time sheet, from time to

22 time. But, yes, this is the reflection of my

23 -- the work that I've done and the time spent

24 on it.

25 Q I spent a couple of stints in big law. I

1 understand the headache of billing.  
 2 A Right.  
 3 Q But, you know, the major kind of tasks, you  
 4 know, outside of thinking about it in the  
 5 shower or, you know ---  
 6 A Okay. Thank you. That's exactly what I was  
 7 thinking. And, I mean, it's possible that I  
 8 thought about it and didn't bill him for it.  
 9 Okay.  
 10 Q You'd agree with that; correct?  
 11 A Yes. Yes. I'm with you. Yes.  
 12 Q I don't see any billing entry related to the  
 13 Anti-Kickback Statute; is that fair?  
 14 A Yes.  
 15 Q In September to October of 2013, you didn't  
 16 provide Phil McHugh any advice regarding  
 17 whether the loan to Dr. Florete complied with  
 18 the Anti-Kickback Statute; correct?  
 19 A Correct.  
 20 Q You didn't procure that advice for Phil McHugh  
 21 from any other lawyer during that time period;  
 22 correct?  
 23 A To my knowledge, no.  
 24 Q Did Mr. McHugh ever discuss with you during  
 25 that time period of September to October 2013

1 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 2 Q Exhibit 6 is email correspondence between  
 3 yourself and Gregory Herman-Giddens; is that  
 4 correct?  
 5 A Yes.  
 6 Q What was Gregory Herman-Giddens' relationship  
 7 to this transaction?  
 8 A Greg Herman-Giddens is a tax lawyer that is a  
 9 colleague of mine that I work with when I have  
 10 issues that may be under Florida law, and I'm  
 11 not licensed in Florida. So, you know, whether  
 12 I'm doing estate planning or business law or,  
 13 you know, whatever it is, I'm going to reach  
 14 out and run it by a colleague who's licensed in  
 15 the proper state. So, he was essentially, you  
 16 know, kind enough on a -- you know, to take a  
 17 look and discuss it with me briefly.  
 18 Q Was his involvement in the Florete loan just  
 19 how it implicated Florida law?  
 20 A I'm sorry. I didn't hear the last part.  
 21 Q Sure. Was his involvement in doing legal work  
 22 on the, you know, October 2013 Florete loan  
 23 just to the extent the loan might implicate  
 24 Florida law?  
 25 A Yes.

1 any advice he had received regarding the Anti-  
 2 Kickback Statute and the Florete loan?  
 3 A No.  
 4 Q If you could turn to Exhibit 3?  
 5 (PLAINTIFF'S EXHIBIT NO. 3 INTRODUCED)  
 6 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 7 Q Exhibit 3 is an email between yourself and  
 8 Jessica Trammel at Wells Fargo, copying Phil  
 9 McHugh and another individual, regarding wiring  
 10 instructions for the loan; is that right?  
 11 A Yes. But I'm -- I'm sorry. I'm reviewing the  
 12 email. Yes, I presume this is the Florete  
 13 loan, yes.  
 14 Q Take your time, Ms. Winger. And this wire  
 15 transfer was completed; correct?  
 16 A Correct. I don't see the receipt, but I  
 17 presume it was, yes.  
 18 Q And Mr. Trammel writes, "The wire's been sent"?  
 19 A Uh-huh.  
 20 Q And it's your understanding that on October 18,  
 21 2013, Mr. Florete, through his companies, was  
 22 paid \$1.7 million?  
 23 A Yes.  
 24 Q Will you turn to Exhibit 6?  
 25 (PLAINTIFF'S EXHIBIT NO. 6 INTRODUCED)

1 Q No involvement regarding the False Claims Act  
 2 or Anti-Kickback Statute?  
 3 A No, sir.  
 4 Q And no other lawyer involved in that  
 5 transaction that gave legal advice on the Anti-  
 6 Kickback Statute or False Claims Act back in  
 7 October of 2013?  
 8 A Not that I know of, no.  
 9 Q In the second email down in the chain, Mr.  
 10 Herman-Giddens writes, "Why is he making this  
 11 loan anyway? Seems like 3.5 percent is not  
 12 enough to justify the risk. What about a  
 13 personal guaranty from Florete?" Did I read  
 14 that correctly?  
 15 A Uh-huh.  
 16 Q And you respond with, "I agree about the rate.  
 17 It's my understanding that Phil is trying to  
 18 get Dr. Florete to come up and work for PCLS.  
 19 Apparently, Dr. Florete made some business deal  
 20 with another guy that isn't working out, so  
 21 Phil is trying to free Dr. Florete from that  
 22 situation." Did I read that correctly?  
 23 A Yes.  
 24 Q Does that email reflect your understanding of  
 25 why Mr. McHugh was making the loan to Dr.

1 them separate. See above for alternate email.  
 2 Thank you, Gabi." Do you know why Gabi was  
 3 asking you to not use Phil's PCLS email  
 4 address?  
 5 A Speaking generally, it's probably similar to me  
 6 not wanting my personal emails to come to my  
 7 firm email, as far as keeping things -- keeping  
 8 things separate. I think that, you know, both  
 9 Phil and probably Gabi had different, you know,  
 10 things going on and they're -- you know,  
 11 organizationally keeping the emails in the  
 12 right bucket would be my -- just my thought on  
 13 it.  
 14 BY MR. CAUDILL:  
 15 I'm going to object to that, just put an  
 16 objection on the record to that question, as it  
 17 calls for speculation.  
 18 BY THE DEPONENT:  
 19 Okay. And I'm sorry. I speculated.  
 20 Absolutely.  
 21 BY MR. CAUDILL:  
 22 If you know. If you don't know ---  
 23 BY THE DEPONENT:  
 24 Sorry. I'm getting tired.  
 25 BY MR. JOHNSON:

1 the correct date, yes.  
 2 Q They are. If you could take a look at Exhibit  
 3 8.  
 4 A Okay.  
 5 (PLAINTIFF'S EXHIBIT NO. 8 INTRODUCED)  
 6 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 7 Q Are those the March 2014 loan modification  
 8 documents that you were referencing?  
 9 A Yes.  
 10 Q There's a Promissory Note Modification  
 11 Agreement?  
 12 A Uh-huh.  
 13 Q And a loan agreement?  
 14 A Yes.  
 15 Q And a cost agreement, again; is that correct?  
 16 A Yes. Uh-huh.  
 17 Q Any other remaining documents, other than those  
 18 three, in March of 2014?  
 19 A To my knowledge, no, unless there was another  
 20 kind of loan closing agreement, a settlement  
 21 statement or something. But I -- I've sent you  
 22 all that I have, so I believe this is complete,  
 23 yes.  
 24 Q And was an additional \$300,000 loaned to Dr.  
 25 Florete in March of 2014?

1 Do you need a break, Ms. Winger?  
 2  
 3 BY THE DEPONENT:  
 4 No. Let me have a sip of water and take a  
 5 pause. I'm fine. We can proceed. All right.  
 6 BY MR. JOHNSON:  
 7 Are you ready?  
 8 BY THE DEPONENT:  
 9 I'm ready.  
 10 (PLAINTIFF'S EXHIBIT NO. 7 INTRODUCED)  
 11 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 12 Q Would you take a look at what should be Exhibit  
 13 7, which is an email chain between yourself and  
 14 Matt Hodges? Do you see that?  
 15 A I do.  
 16 Q If you look at the second page of the email  
 17 chain, you email Mr. Hodges in March of 2014,  
 18 stating, "Matt, please take a look at the  
 19 attached docs. Phil is loaning Orlando  
 20 additional 300K and modifying term and rate."  
 21 Do you see that?  
 22 A Uh-huh.  
 23 Q Was there a loan modification in March of 2014?  
 24 A Yes. If you -- I'm assuming those documents  
 25 are in another exhibit, but that sounds like

1 A To my knowledge, yes.  
 2 Q Do you know why an additional \$300,000 was  
 3 loaned to Dr. Florete, in March of 2014?  
 4 A It was my understanding that it was a general  
 5 capital need for operational expenses, but I am  
 6 not certain.  
 7 Q As is before, you submitted your invoice to Dr.  
 8 Florete for your legal services on this loan;  
 9 correct?  
 10 A I presume, yes. Is there ---  
 11 Q There is. Yeah.  
 12 A Okay.  
 13 Q That was the same cost agreement as the October  
 14 2013 loan; right?  
 15 A Right.  
 16 (PLAINTIFF'S EXHIBIT NO. 9 INTRODUCED)  
 17 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 18 Q And if you'll look at Exhibit 9, that's an  
 19 email from yourself to Travis Guthrie,  
 20 attaching your invoice for the work in March of  
 21 2014; correct?  
 22 A Correct.  
 23 Q Is that a "yes," Ms. Winger?  
 24 A Yes.  
 25 Q If you will turn to the invoice that's dated

1 April 1st, 2014, and has three dates worth of  
 2 billing entries; do you see that?  
 3 A 1173?  
 4 Q Yes, ma'am.  
 5 A Yes. I am looking at it, yes.  
 6 Q Does this invoice accurately reflect your work  
 7 on the loan modification, in March of 2014?  
 8 A Yes.  
 9 Q No other major substantive legal work that you  
 10 performed that's not on this invoice?  
 11 BY MR. CAUDILL:  
 12 Object to form.  
 13 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 14 Q You can answer, Ms. Winger.  
 15 BY MR. CAUDILL:  
 16 You can answer.  
 17 BY THE DEPONENT:  
 18 Sorry. I'm not that kind of lawyer, so I'm  
 19 looking for someone to guide me.  
 20 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 21 Q I'll back it up.  
 22 A Okay.  
 23 Q Before we had talked about, you know, you had  
 24 kind of a worry that maybe you were thinking  
 25 about it in the shower ---

1 right?  
 2 A I reached out to her in -- later in 2014. But  
 3 do you mean (pause) ---  
 4 Q Right. We can get to these emails but, you  
 5 know, there's emails where you reached out to  
 6 Ms. Markus in October of 2014. That is after,  
 7 you know, March of 2014; right?  
 8 A Correct.  
 9 Q And I'm just trying to make sure that, you  
 10 know, there wasn't another time that you  
 11 reached out to either Ms. Markus or anyone  
 12 else, you know, back in the March 2014 time  
 13 period, regarding AKS advice?  
 14 A No, I did not.  
 15 Q Just to close the loop on this, in March of  
 16 2014, you did not give Mr. McHugh any legal  
 17 advice related to the AKS; right?  
 18 A Correct.  
 19 Q And you didn't go out and procure any legal  
 20 advice for Mr. McHugh regarding the AKS, in the  
 21 March 2014 loan modification at that time;  
 22 right?  
 23 A Right.  
 24 Q There's no AKS legal advice that was given in  
 25 March 2014, related to the Florete loan

1 A Right.  
 2 Q So same question here. Legal work that you did  
 3 on the loan, kind of outside of something like  
 4 that, would be reflected here in this invoice;  
 5 correct?  
 6 A Correct.  
 7 Q I don't see anything regarding either the AKS  
 8 or False Claims Act on this invoice; is that  
 9 fair?  
 10 A Yes.  
 11 Q And is it fair to say that you did not give Mr.  
 12 McHugh any legal advice regarding the AKS or  
 13 False Claims Act in March of 2014?  
 14 A Yes. That's fair to say. I did not advise him  
 15 in that way.  
 16 Q You also didn't procure any advice related to  
 17 the AKS or FCA for Mr. McHugh, related to the  
 18 March 2014 loan modification, at that time;  
 19 correct?  
 20 A Correct. And I'm pausing because, you know, we  
 21 did speak with Trish Markus, and I just wanted  
 22 to -- I don't believe that was prior to this  
 23 April of 2014 invoice.  
 24 Q Maybe this will make it simple. You reached  
 25 out to Patricia Markus at Smith Moore once;

1 modification, that you're aware of; right?  
 2 A Not that I'm aware of, no.  
 3 Q At one point, though, you did reach out to  
 4 Patricia Markus; right?  
 5 A Yes.  
 6 (PLAINTIFF'S EXHIBIT NO. 10 INTRODUCED)  
 7 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:  
 8 Q If you'll look at Exhibit 10, that is a chain  
 9 of emails between yourself and Ms. Markus;  
 10 correct?  
 11 A Correct.  
 12 Q The first one is dated October 7, 2014, from  
 13 yourself to Ms. Markus, and you note at the  
 14 beginning that "We spoke on 09-18 about my  
 15 client Philip McHugh and a loan made by his  
 16 entity Silent Storm Holdings, LLC, to the  
 17 Institute of Pain Management in Jacksonville,  
 18 Florida; right?  
 19 A Correct.  
 20 Q Was that Line 18 phone conversation the first  
 21 time you spoke with Ms. Markus regarding this  
 22 matter?  
 23 A I do not recall.  
 24 Q Do you recall any conversations, emails or  
 25 other correspondence with Ms. Markus, outside

1 A Yes.

2 Q Did you ever provide Ms. Markus with any other

3 facts that aren't contained in this email

4 correspondence for her to rely on in forming

5 her AKS opinion?

6 A To my knowledge, no.

7 Q And Ms. Markus ultimately did provide you with

8 an opinion on both the Stark Law and the Anti-

9 Kickback Statute, as it relates to her

10 understanding of the facts regarding the

11 Florete loan; correct?

12 A Yes.

13 Q And that opinion is contained in the October

14 9th, 2014, email that's on the second page of

15 Exhibit 10?

16 A Yes.

17 Q Did she provide any other opinions, other than

18 what is contained in this email?

19 A To my knowledge, no. I mean, it would have

20 been produced with the other documents, but I

21 believe this is the only one.

22 Q To be clear, no prior opinions before this

23 October 9th, 2014, email; correct?

24 A Correct.

25 (PLAINTIFF'S EXHIBIT NO. 11 INTRODUCED)

1 Q I'll rephrase it. Were you ever billed for any

2 work, outside of these invoices?

3 A Was I billed?

4 Q Sure. So looking at the first page of Exhibit

5 11, it's an invoice from Smith Moore

6 Leatherwood to yourself; correct?

7 A Correct.

8 Q For work performed for Phil McHugh and Silent

9 Storm Holdings; right?

10 A Right.

11 Q And the invoices we've looked at span the time

12 period of 09-18-2014 until November 7th, 2014;

13 right?

14 A Right.

15 Q Did you ever receive any other invoices from

16 Smith Moore Leatherwood, related to Anti-

17 Kickback Statute advice for Phil McHugh?

18 A No.

19 Q So the work they performed on this matter is

20 reflected in the invoices in Exhibit 11;

21 correct?

22 A To my knowledge, yes.

23 Q Did you ever reach out to anyone else, other

24 than Patricia Markus, for legal advice

25 regarding the Anti-Kickback Statute and the

1 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

2 Q If you could take a look at Exhibit 11, and

3 this is Smith Moore's invoice on the matter.

4 Do you see that?

5 A Uh-huh.

6 Q Page 1 is dated in November of 2014; correct?

7 A Yes.

8 Q And it's for the services rendered from 09-18-

9 2014 to 10-09-2014; right?

10 A Right.

11 Q That's for \$2,685; right?

12 A Yes.

13 Q And then, if you will turn to the very last

14 page of the exhibit, there's a December invoice

15 for a telephone conference on November 7th,

16 2014; do you see that?

17 A (Upon review) Yes.

18 Q Is there any work that Patricia Markus or

19 anyone at Smith Moore Leatherwood performed

20 regarding this matter that's not reflected in

21 these invoices?

22 BY MR. CAUDILL:

23 I'm going to object. I don't know how she

24 would know the answer to that.

25 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

1 Florete loan?

2 A I did not.

3 Q Did you ever reach out to anyone else, other

4 than Patricia Markus, regarding any activity

5 that Phil McHugh did while at PCLS and

6 compliance with the Anti-Kickback Statute?

7 A No.

8 Q So it's fair to say the sum total of the Anti-

9 Kickback Statute advice that you received was

10 from Patricia Markus in the September to

11 October, November time frame in 2014; right?

12 A Correct.

13 Q Have you ever performed any legal work or given

14 any legal advice to anyone at PCLS, other than

15 Phil McHugh?

16 A I have not. Frankly, PLS (sic) had -- there

17 have been many lawyers involved that this fell

18 into their area of expertise.

19 BY MR. JOHNSON:

20 Let's take five. I might be about done.

21 (OFF THE RECORD)

22 DIRECT EXAMINATION RESUMED BY MR. JOHNSON:

23 Q Ms. Winger, just a couple of quick questions,

24 and then I will pass you off to Bo. Going back

25 to the original October 2013 loan to Dr.

CERTIFICATE

I, Dee Anna Michaels, CVR-M, CCR, Court Reporter and Notary Public, do hereby certify that the foregoing 85 pages are an accurate transcript of the deposition of Anna Winger, taken by me and transcribed under my supervision.

I further certify that I am not financially interested in the outcome of this action, a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel.

This is the 15th day of November 2020.

\_\_\_\_\_  
DEE ANNA MICHAELS, CVR-M, CCR

Notary Public No.: 19953300157

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Joseph Strickland

UNITED STATES OF AMERICA, et al., ex rel. HARTNETT  
and SCHOCHED v. PHYSICIANS CHOICE LABORATORY  
SERVICES, LLC, et al.  
3:17-cv-37-KDB-DCK

November 6, 2020



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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:17-cv-37-KDB-DCK

UNITED STATES OF AMERICA, et al., )  
ex rel. TARYN HARTNETT and DANA )  
SCHOCHED, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
PHYSICIANS CHOICE LABORATORY )  
SERVICES, LLC, DOUGLAS SMITH, )  
PHILIP MCHUGH, and MANOJ KUMAR, )  
 )  
Defendants. )

12:58 p.m.  
November 6, 2020  
Charlotte, North Carolina

30(b)(6) DEPOSITION  
  
OF  
  
DEPARTMENT OF HUMAN AND HEALTH SERVICES  
  
BY AND THROUGH ITS AGENT  
JOSEPH ALLEN STRICKLAND

2

APPEARANCES:

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Also Present: Cathleen Hollowell, Investigator  
Jill Wright, OGC  
\* \* \* \* \*

3

I N D E X

30(b)(6) EXAMINATION OF PAGE  
JOSEPH ALLEN STRICKLAND  
By Mr. Caudill 4  
\* \* \* \* \*  
EXHIBITS  
DEFENDANT'S PAGE  
NUMBER MARKED  
Exhibit 1 Reopening Simple Claim Correction 15  
Exhibit 2 Physicians Choice Check 12676 and 19  
Supporting Documentation  
Exhibit 3 Notice of 30(b)(6) Deposition 20  
\* \* \* \* \*  
This is the 30(b)(6) deposition of DEPARTMENT OF HUMAN AND  
HEALTH SERVICES, by and through its agent, JOSEPH ALLEN  
STRICKLAND, taken pursuant to Notice of the parties and in  
accordance with the Federal Rules of Civil Procedure before  
Shannon J. Colangelo, Notary Public, located in the offices of  
U.S. Attorney's Office, Carillon Tower, 227 West Trade Street,  
Suite 1650, Charlotte, North Carolina, on November 6, 2020,  
beginning at 12:58 p.m.  
IT IS STIPULATED AND AGREED by and between counsel for the  
parties that all objections except as to form shall be reserved  
until which time they can be heard by the Court.  
IT IS STIPULATED AND AGREED by and between counsel for the  
parties that the reading and signing of this transcript by the  
witness is reserved.

4

JOSEPH ALLEN STRICKLAND, called as a witness, having  
been duly sworn, was examined and testified as follows:  
E X A M I N A T I O N (By Mr. Caudill):  
Q. Can you please tell us your name for the record?  
A. Joseph Strickland.  
Q. Mr. Strickland, we met off the record, but my name is  
Bo Caudill. I represent the defendant, Philip McHugh  
in the case of United States versus Physicians Choice  
Laboratory Services, LLC, and others. That is case  
number 3:17-cv-37 in the Western District of North  
Carolina; have you heard of that case before?  
A. Yes.  
Q. Mr. Strickland, you are here today pursuant to a --  
you've been designated by the Department of Health  
and Human Services to answer questions within certain  
categories of inquiry at this deposition; is that  
your understanding?  
A. Yes.  
Q. Before I get into some of the ground rules of the  
deposition, can you tell me your current job title  
and give me just sort of a 30,000-foot view of your  
day-to-day job functions?  
A. I am an accounting director at Palmetto GBA, the  
Medicare administrative contractor for CMS. I  
oversee overpayment and debt collection activities



5

7

1 for Medicare providers.

2 MR. JOHNSON: And, Bo, just so the  
3 record is clear, we designated him for  
4 1F and 1G of your notice.

5 MR. CAUDILL: Great. Thank you, Seth.

6 Q. So what Mr. Johnson just indicated is that the  
7 Department of Health and Human Services has  
8 designated you to answer my questions within two  
9 categories of inquiry. The first one is whether  
10 Physicians Choice ever repaid or attempted to repay  
11 any amounts received from Medicare as payment or  
12 reimbursement for the testing samples referred from  
13 the Institute of Pain Management; is that right,  
14 you're here to answer questions about that today?

15 A. Yes, those two questions.

16 Q. And there's one other question and that is whether  
17 Physicians Choice repaid or attempted to repay any  
18 amounts received from Medicare as payment for a  
19 different referring physician, Sanker Jayachandran;  
20 is that right?

21 A. Yes.

22 Q. Is that your understanding?

23 A. That is my understanding.

24 Q. Have you ever been deposed before?

25 A. I have not.

6

1 Q. Okay. So I'm going to go over some ground rules of  
2 deposition with you. First, I want to talk  
3 specifically about this kind of deposition. So,  
4 today, as we mentioned earlier, you're here to  
5 testify on behalf of the Department of Health and  
6 Human Services; is that your understanding?

7 A. Yes.

8 Q. And so throughout today's deposition, I may say you,  
9 I may use that pronoun, but in all such instances, I  
10 am referring to the department; does that make sense  
11 to you?

12 A. Uh-huh.

13 Q. I'm sorry. I'm going to tell you this later on, but  
14 it's important that you to give a verbal response; is  
15 that a yes?

16 A. That is a yes.

17 Q. Thank you. Now, let's go over some more general  
18 deposition rules?

19 A. Okay.

20 Q. So the first one is you're testifying here today  
21 under oath; do you understand that?

22 A. Yes.

23 Q. It's the same oath that you would take if you were  
24 testifying in court; does that make sense?

25 A. Yes.

1 Q. And so the obligation is to tell the truth, the whole  
2 truth and nothing but the truth, right?

3 A. Yes.

4 Q. Any reason why you would be unable to do that today?

5 A. No.

6 Q. Because your testimony is being recorded in the form  
7 of a written transcript, it's also important that you  
8 provide verbal responses to my questions. So if I  
9 ask you a yes or no question, for example, uh-huh or  
10 uh-uh is difficult to translate on a transcript.  
11 Also head nods and head shakes don't translate to the  
12 transcript; does that make sense?

13 A. Yes.

14 Q. So I may interrupt you or ask you to say yes or no,  
15 I'm not trying to be rude, I'm just trying to make  
16 sure the record is clear. Okay?

17 A. I understand.

18 Q. The other sort of non-intuitive thing is while we're  
19 talking and the court reporter is taking down our  
20 testimony, it's very helpful to the court reporter  
21 that we not speak over each other. So I will do my  
22 best today not to speak over you and I will ask that  
23 you do the same for me. Okay?

24 A. I understand.

25 Q. If I ever ask you a question that you don't

8

1 understand or that's unclear to you, please ask me to  
2 clarify the question. Okay?

3 A. I will.

4 Q. If you begin answering my question without asking to  
5 clarify, I will assume that you understood it; does  
6 that make sense?

7 A. Yes, it does.

8 Q. Then last, but not least, I anticipate this will be a  
9 very short deposition. In the event, however, that  
10 you need to take a break for any reason, stretch your  
11 legs, walk around, get something to drink, please  
12 feel free to ask me to take a break. Okay?

13 A. I understand.

14 Q. The only thing that I will ask is that before we take  
15 any break, if there's a pending question, that we  
16 finish answering that question. Okay?

17 A. Yes.

18 Q. Great. All right. So referring back then to the two  
19 categories of inquiry, we're going to take them one  
20 at a time. Just so the record is clear, I'm going to  
21 read the categories to you. I know that's a little  
22 dry. Bear with me. Okay?

23 A. (The witness gave a nonverbal answer.)

24 Q. The first category of inquiry was whether Physicians  
25 Choice ever repaid or attempted to repay any amounts

9

11

1 received from Medicare as payment or reimbursement  
 2 for the testing of samples referred from the  
 3 Institute of Pain Management. What did you do to  
 4 prepare to answer questions about that today? Please  
 5 don't tell me anything that you discussed with your  
 6 attorneys.

7 A. We researched the cash receipts and overpayments  
 8 associated with the company, Pain Management, and  
 9 identified the universe of that activity. And that's  
 10 what we used to review the request, the question.

11 Q. Okay. And, I'm sorry, I'm probably going to ask you  
 12 some questions today that we may have to go back and  
 13 forth a little bit to make sure we understand. When  
 14 you say that you reviewed the cash receipts, in this  
 15 context, what is a cash receipt?

16 A. A cash receipt would be a check that was remitted by  
 17 the provider to Medicare.

18 Q. And that would come through a company called Palmetto  
 19 GBA; is that right?

20 A. It would be remitted to Palmetto GBA by the provider,  
 21 yes.

22 Q. Okay. So just to understand sort of how we would try  
 23 to trace those payments, we would look at the records  
 24 of Palmetto GBA to see if they received a check from  
 25 Physicians Choice; that's one way to do it?

10

1 A. Yes.

2 Q. And you did that?

3 A. Yes.

4 Q. And then I think you said you looked at another data  
 5 set; what was that?

6 A. The other data set was any overpayments that had been  
 7 established, an overpayment being an adjustment to a  
 8 previously paid claim that resulted in money due back  
 9 to Medicare.

10 Q. And so I think you explained that pretty well. In  
 11 this context, an overpayment refers to a  
 12 determination on the part of Medicare that it had  
 13 issued reimbursement above the appropriate  
 14 reimbursement rate?

15 A. Could you ask the question again please?

16 Q. Absolutely. So overpayment, in this context, refers  
 17 to a situation where Medicare has paid a claim above  
 18 what it determined to be the proper reimbursement  
 19 rate?

20 A. Well, if I could clarify that?

21 Q. Yes, please do. Yes.

22 A. The overpayment would be where Medicare has adjusted  
 23 the previously paid amount to an amount that is now  
 24 lower and determined an amount is due back to  
 25 Medicare.

1 Q. All right. And so when you -- that information about  
 2 overpayment is maintained separately from the cash  
 3 receipts that you were talking about before, sort of  
 4 in a separate data set?

5 A. Yes.

6 Q. Okay. So there are a number of instances, I suppose,  
 7 where a company like Physicians Choice -- and just so  
 8 the record is clear, you understand that to be a  
 9 diagnostic laboratory?

10 A. That is my understanding.

11 Q. All right. Yeah. Where a diagnostic lab like  
 12 Physicians Choice might repay money to Medicare  
 13 through Palmetto GBA. One of those circumstances is  
 14 when an adjustment has been made and there's an  
 15 overpayment; is that right?

16 A. Could you ask the question again please?

17 Q. All right. And, I'm sorry, it's going to be a lot  
 18 like this for most of the deposition.

19 A. That's okay.

20 Q. Okay. So under what circumstances, sort of normal  
 21 circumstances, would a company like Physicians Choice  
 22 write a check to Palmetto GBA?

23 MR. JOHNSON: Object to the extent he  
 24 can't testify what's in Physician  
 25 Choice's head when they're doing any

12

1 particular thing, but, I mean, you can  
 2 testify from Palmetto's perspective.

3 MR. CAUDILL: Right.

4 A. So, generally speaking, a provider would identify an  
 5 error in billing or something that they submitted  
 6 incorrectly and is now disclosing that and would  
 7 submit a request to adjust the claim.

8 Q. Okay. Would there be any preliminary -- would it be  
 9 normal -- well, I'm trying to think if there's a  
 10 better way for me to ask this question. In addition  
 11 to cash receipts and overpayment records, would it be  
 12 typical for a company like Physicians Choice to  
 13 communicate with Palmetto GBA in advance of making a  
 14 repayment?

15 MR. WALKER: Object to the form.

16 A. Yeah. Could you repeat the question again please?

17 Q. Yeah. Let me try it this way. I'm going to give you  
 18 sort of -- I'm going to try to do this by way of a  
 19 hypothetical so you can understand what I'm trying to  
 20 get. So imagine Physicians Choice decides that it  
 21 has received money from Medicare that it should not  
 22 have received. It's made that decision independently  
 23 of Medicare or Palmetto GBA; it's reached that  
 24 decision on its own. Would they then just cut a  
 25 check to Palmetto GBA or would there need to be some

13

15

1 kind of communication between those two companies so  
 2 that Palmetto GBA knew what that payment related to?  
 3 MR. JOHNSON: Objection; calls for  
 4 speculation. You can answer if you  
 5 understand.  
 6 THE WITNESS: I do understand the  
 7 question, thank you.  
 8 A. Yeah. So typically a provider would not just send in  
 9 a check with no documentation.  
 10 Q. All right. So that would be pretty unusual?  
 11 A. Uh-huh.  
 12 Q. That's what I was trying to make sure I understood.  
 13 So in addition to looking through cash receipts and  
 14 overpayment records, did you check any other records  
 15 of Palmetto GBA?  
 16 A. No.  
 17 Q. So you did not, for example, look for communications  
 18 between representatives of Physicians Choice or  
 19 Palmetto GBA related to the possibility of an  
 20 overpayment?  
 21 A. No, we did not.  
 22 Q. Okay. After you checked check receipts -- or, excuse  
 23 me, cash receipts and overpayment records, what did  
 24 you locate?  
 25 A. And this is still related to the first question?

14

1 Correct.  
 2 Q. Yes. This is related to the Institute of Pain  
 3 Management and the doctors associated with that  
 4 practice.  
 5 A. Okay. We did not locate any receipts or collections  
 6 associated with any funds remitted back to Medicare  
 7 for Physicians Choice.  
 8 Q. All right. Let's move to the second question, which  
 9 relates -- the same exact question except a different  
 10 referring provider, Sanker Jayachandran. What did  
 11 you do -- did you do anything differently to prepare  
 12 to respond to that question than you did with respect  
 13 to the one we've already discussed?  
 14 A. No, it was the same process to review and research.  
 15 Q. All right. And after you did that, what did you  
 16 locate?  
 17 A. We identified two claims that had been submitted by  
 18 the provider, by Physicians Choice, that resulted in  
 19 overpayments. The two claims totalled \$732.02, I  
 20 believe, and it was -- the reopening requested -- the  
 21 request to adjust the claim was submitted by the  
 22 provider January 20, 2015. The overpayment was  
 23 demanded as a result of the request. The overpayment  
 24 was demanded by Medicare on February 20, 2015, and it  
 25 was -- the overpayment amounts were collected through

1 recoupment through the provider's Medicare  
 2 reimbursement on April 6, 2015.  
 3 Q. Okay. And I've been handed a document that I'm  
 4 going to -- feel free to sort of be cautious about  
 5 touching it -- but, I think you've seen it before,  
 6 that I'm going to mark as Defendant's 1 for the  
 7 purpose of this deposition.  
 8 MR. CAUDILL: Can I borrow a pen?  
 9 MR. VILLMER: Now you're going to touch  
 10 it.  
 11 (WHEREUPON, [Exhibit 1](#) was marked for  
 12 identification.)  
 13 Q. If you could just take a look at that document and  
 14 let me know if you've seen it before?  
 15 A. Yes, I have.  
 16 Q. Okay. Can you tell me what this document is?  
 17 A. This is a simple claim correction reopening form that  
 18 this provider submitted to adjust these two claims.  
 19 Q. Okay. And do you know whether this payment was made  
 20 by -- this repayment was made by Physicians Choice  
 21 following adjustment?  
 22 A. Could you -- I guess -- so a check was not submitted  
 23 by Physicians Choice for these adjustments.  
 24 Q. All right. So, just to make sure I understand how  
 25 this process would go and what this reflects, okay,

16

1 so I think you testified the provider requested that  
 2 this claim be reviewed; is that what -- did I  
 3 understand that correctly?  
 4 A. No, the provider submitted the request to have this  
 5 -- have these claims adjusted.  
 6 Q. Okay. And so in this context, what does that -- what  
 7 does a request to have a claim adjusted, what does  
 8 that refer to?  
 9 A. It refers to a request from a provider that would be  
 10 submitted with their request for the adjustment that  
 11 they want to disclose and Palmetto GBA would make the  
 12 adjustment as the provider requests.  
 13 Q. Okay. And so -- and I understand this is a very sort  
 14 of dumb-down question, but for the benefit of the  
 15 folks who don't work in this field, in this context,  
 16 what is an adjustment; what does that mean?  
 17 A. An adjustment would be a correction to a previously  
 18 paid claim.  
 19 Q. All right. So I think then, if I'm understanding  
 20 correctly, the provider asked Palmetto to adjust a  
 21 previously submitted -- a claim that had been  
 22 previously paid?  
 23 A. That is correct.  
 24 Q. All right. And then that happened and Palmetto  
 25 issued this simple claim correction indicating an

17

19

1 amount billed in error of \$732.02?

2 A. That is correct.

3 Q. So that amount would be an overpayment?

4 A. That's right.

5 Q. And it would then be Physicians Choice's

6 responsibility to pay that money back to Palmetto?

7 A. That is correct.

8 Q. And there's no check showing that that happened?

9 A. That is correct.

10 Q. Other than that document, were there any documents

11 that you saw in your review that indicated that

12 Palmetto GBA received payment from Physicians Choice

13 related to Sanker Jayachandran?

14 A. We did not locate -- there were no other documents.

15 Q. Again, just to make sure that I'm clear, your

16 investigation into that involved checking the cash

17 receipts and overpayment data?

18 A. That is correct.

19 Q. And you would have found this -- this would be a form

20 that you would have found in the overpayment data?

21 A. That is correct.

22 Q. Similarly to your testimony with respect to the

23 Institute of Pain Management, you didn't look for or

24 locate any e-mails concerning the possibility of a

25 repayment?

18

1 A. No.

2 Q. All right. Or any discussion between Palmetto GBA's

3 representatives and Physicians Choice's

4 representatives about Physicians Choice's desire to

5 make a repayment?

6 A. No, we did not locate anything, anything that would

7 constitute what you just described.

8 Q. All right. I'm going to ask kind of a difficult

9 question here and I'll be happy to try to tailor it

10 as much as I can. Is there any reason that you're

11 aware of that Physicians Choice would send money to

12 Palmetto GBA, other than as a repayment for an

13 overpayment or -- well, really, I guess that's it.

14 So is there any reason, other than that, that

15 Physicians Choice would send money to Palmetto GBA?

16 MR. JOHNSON: Objection; calls for

17 speculation. You can answer.

18 THE WITNESS: I can answer?

19 A. To my knowledge, there would be no other reason than

20 to repay an overpayment.

21 Q. Is the -- are repayments for claims processed and

22 paid through Tricare sort of segregated from

23 repayments for claims processed and paid by Medicare

24 Part B?

25 A. Tricare is a different payer all together and would

1 be outside of what Palmetto GBA administers.

2 Q. Okay.

3 MR. CAUDILL: If we could just take five

4 minutes? I do have a few more for you,

5 but I've got some logical things I've

6 got to figure out. If we could go off

7 the record?

8 (WHEREUPON, a recess was taken from 1:19

9 to 1:44 p.m.)

10 BY MR. CAUDILL:

11 Q. Mr. Strickland -- it is Strickland, right?

12 A. Yes.

13 Q. Okay. I'm sorry. I'm having trouble this morning

14 keeping up with everybody's names. We just got back

15 from a break. I have a few more questions for you.

16 The first thing I'm going to do, I'm actually

17 going to mark a document that the government's

18 counsel just handed to me, which I understand to be

19 part of the subpoena production that Palmetto GBA has

20 served on us in this case and we've just had some

21 issues getting it open. This is going to be

22 Defendant's 2.

23 (WHEREUPON, [Exhibit 2](#) was marked for

24 identification.)

25 MR. CAUDILL: I'm also going to mark the

20

1 notice as Defendant's 3.

2 MR. JOHNSON: That's fine.

3 (WHEREUPON, [Exhibit 3](#) was marked for

4 identification.)

5 Q. All right. So, Mr. Strickland, if you could take a

6 look at what I marked as Defendant's 3 and, once

7 you've had the opportunity to look at it, could you

8 tell me have you seen it before?

9 A. Three or two?

10 Q. Two, Defendant's 2.

11 A. I have seen it before.

12 Q. What is that document, sir?

13 A. This is a check received from Physicians Choice to

14 Palmetto GBA for repayment of an overpayment demand.

15 Q. All right. And do you -- there's a -- on the first

16 page, underneath our voucher number, there's a -- the

17 words multi and then the abbreviation ACCT. Does

18 that stand for multiple accounts?

19 A. So I didn't complete this. I believe this was

20 submitted by the provider.

21 Q. I see. So this is a Physicians Choice document?

22 A. Yes, it is.

23 Q. This page one. So then, as we flip through this

24 document, these overpayments, what I'm trying -- I

25 guess what I'm trying to get to is do you know what

21

23

1 referring doctor any of those overpayments would be  
 2 related to?  
 3 A. I don't know, based on the review here. But, we have  
 4 a record of the referring doctors for each of those  
 5 overpayments.  
 6 Q. If I were to hand you this document outside of the  
 7 context of this deposition and ask you to go  
 8 determine who -- what doctors referred to Physicians  
 9 Choice for the services related to these  
 10 overpayments, how would you go about doing that?  
 11 A. We would have to query the claim in the claim system  
 12 and the claim itself would store the referring  
 13 doctor's information.  
 14 Q. All right. If I were just -- if all I had to  
 15 reference was the claims data for each of those claim  
 16 numbers that are listed in this document, would the  
 17 claim data tell me who the referring doctor was?  
 18 A. Yes, it would.  
 19 Q. All right. You testified earlier how you went about  
 20 trying to determine if a repayment was received.  
 21 What date range were you using in terms of trying to  
 22 locate repayment?  
 23 A. The date range that we were asked to research was  
 24 January 1, 2013, through December 31, 2016.  
 25 Q. All right. So any time from January 1, 2013 to the

22

1 end of 2016?  
 2 A. (The witness gave a nonverbal answer.)  
 3 Q. And you were asked -- so, again, sort of in the  
 4 course of your investigation, what you looked for  
 5 were cash receipts and overpayment records. And that  
 6 would include what is here in [Exhibit 2](#), right;  
 7 that's an overpayment record?  
 8 A. That -- well, this is a cash receipt record.  
 9 Q. Okay.  
 10 A. This is the cash receipt copy that was received with  
 11 the physical check.  
 12 Q. This first page of Exhibit 2?  
 13 A. And the succeeding pages are what was included by the  
 14 provider in repaying -- in submitting the check to  
 15 Medicare.  
 16 Q. I see. And that would be sort of ordinarily how it  
 17 would go. If there's an overpayment, you would get a  
 18 check, the check would reference the overpayment  
 19 notice?  
 20 MR. WALKER: Object to form.  
 21 A. That is correct.  
 22 Q. All right. Are you aware of any instance in  
 23 which -- well, strike that. Let me ask it this way.  
 24 Could Physicians Choice bypass Palmetto GBA to make a  
 25 repayment directly to CMS for amounts that Physicians

1 Choice decided it should not have received from CMS?  
 2 Is that possible?  
 3 MR. JOHNSON: Objection; calls for  
 4 speculation. If you know, you can  
 5 answer.  
 6 A. We have had cases where a provider has gone to CMS to  
 7 discuss overpayments, but it always comes back to the  
 8 MAC to administer the financial transaction.  
 9 Q. So in that distance, in the instance you just  
 10 described, it would be typical for CMS to say send  
 11 your payment through Palmetto GBA?  
 12 MR. JOHNSON: Objection; calls for  
 13 speculation. But, you can answer.  
 14 A. In the experience that we've had, yes.  
 15 Q. Yeah. And that's all that I'm asking. Did you  
 16 review any record, other than the records of Palmetto  
 17 GBA, in attempting to determine whether any repayment  
 18 to CMS was made?  
 19 A. No.  
 20 Q. All right. I'm -- again, I'm going to ask you some  
 21 questions that really are -- they may strike you as  
 22 silly. I'm sorry. I certainly don't want to waste  
 23 your time, I just want to make sure I understand how  
 24 the system works. Is it possible that if Physicians  
 25 Choice wanted to repay amounts to Palmetto GBA, that

24

1 one way Palmetto GBA would accept repayment would be  
 2 in the form of credits against future payments?  
 3 A. Can you describe credits against future payments?  
 4 Q. Let's use -- let's try the phrase withholding of  
 5 future payments. For example, if Palmetto GBA  
 6 determined that CMS -- or if CMS determined CMS was  
 7 owed money by Physicians Choice and then Physicians  
 8 Choice made additional claims, could CMS withhold  
 9 payment to reimburse itself for the overpayment?  
 10 A. Yes. When an overpayment is established, if a  
 11 provider chooses not to remit a check for the  
 12 overpayment, administratively, a Medicare contractor  
 13 is authorized to offset and withhold from that  
 14 provider's Medicare reimbursement.  
 15 Q. How would one go about determining whether that sort  
 16 of withholding occurred?  
 17 A. We would review the overpayment activity as well as  
 18 the payment activity for a provider and those  
 19 offsets, those withholding amounts, would be  
 20 reflected in those financial transactions.  
 21 Q. Again, I'm sorry, I'm going to sort of ask a strange  
 22 question. In the event of a voluntary repayment,  
 23 there would not necessarily be -- you tell me if I'm  
 24 wrong, but there would not necessarily be an  
 25 overpayment record showing that that amount was

25

1 demanded by CMS or accepted by CMS as repayment on  
 2 the account; is that true?  
 3 A. So if a provider voluntarily repays, they disclose  
 4 and remit payment for an overpayment that they are  
 5 disclosing up front, the -- in our financial system,  
 6 we would record a voluntary overpayment. So there  
 7 would be a financial record of receiving a check and  
 8 a voluntarily disclosed overpayment, and the claims  
 9 system would also be updated to reflect that the  
 10 provider has voluntarily disclosed and repaid a claim  
 11 adjustment associated with the overpayment.  
 12 Q. All right. And so when you're looking through  
 13 overpayment records, would that kind of record show  
 14 up as part of that search?  
 15 A. Yes, it would.  
 16 Q. All right. At this point, having looked at the cash  
 17 receipts and the overpayment records, is there  
 18 anything else that in your mind it would be a good  
 19 idea to review to determine whether a repayment was  
 20 made during the time period you referenced?  
 21 A. Could you rephrase the question please?  
 22 Q. Yeah. The -- I guess what I'm driving at is sort of  
 23 the confidence level of the belief that no repayment  
 24 was made based on your investigation. I'm not asking  
 25 you to be 100 percent certain, right; nobody is

26

1 100 percent certain of anything. But, I am trying to  
 2 sort of gauge is there anything else out there that  
 3 maybe it would be a good idea to look into before we  
 4 said no payment was made during this time period; is  
 5 there anything like that?  
 6 MR. WALKER: Object to the form.  
 7 A. There would be nothing else that would provide any  
 8 kind of indication of any repayment. We've  
 9 researched everything that would provide us with any  
 10 indication of repayment.  
 11 Q. Okay. So that -- and that's cash receipts and  
 12 overpayment records?  
 13 A. Yes.  
 14 Q. All right. Okay, Mr. Strickland, I really appreciate  
 15 you taking the time to speak with me today. I don't  
 16 have any further questions for you at this time?  
 17 MR. JOHNSON: Nothing from me.  
 18 COURT REPORTER: Read and sign or waive?  
 19 THE WITNESS: Read.  
 20 (WHEREUPON the deposition was concluded  
 21 at 2:01 p.m.)  
 22  
 23  
 24  
 25

27

1 STATE OF NORTH CAROLINA )  
 2 COUNTY OF CABARRUS ) CERTIFICATE  
 3  
 4 I, Shannon J. Colangelo, Notary Public, do hereby  
 5 certify that JOSEPH ALLEN STRICKLAND was duly sworn by me prior  
 6 to the taking of his deposition; that said deposition was taken  
 7 and transcribed by me; and that the foregoing pages are a true  
 8 and accurate transcript of the testimony of said witness. I  
 9 further certify that the persons were present as stated.  
 10 I further certify I am not of counsel for or in the  
 11 employment of any of the parties to this action, nor am I  
 12 interested in the result of said action.  
 13 IN WITNESS WHEREOF, I have hereunto subscribed my name,  
 14 this 19th day of November, 2020.  
 15  
 16  
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 22



SHANNON J. COLANGELO  
 Notary #201735200055  
 My Commission Expires: 12/10/22

25

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1 VERIFICATION OF DEPONENT  
 2  
 3  
 4 I, JOSEPH ALLEN STRICKLAND, have read the foregoing  
 5 testimony, which was reported by Shannon J. Colangelo, Notary  
 6 Public in and for the State of North Carolina, on November 6,  
 7 2020.

8 I find the transcript of my testimony to be true and  
 9 accurate according to my testimony on that date, with the  
 10 exception of \_\_\_\_\_ corrections as listed on the attached  
 11 errata page, which was completed by me.  
 12  
 13  
 14  
 15

JOSEPH ALLEN STRICKLAND

16

17  
 18 Sworn to and Subscribed before me  
 19 this \_\_\_\_ day of \_\_\_\_\_, 2020.  
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1	ERRATA SHEET		
2	Page #	Line #	Change/Correction (& Explanation)
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
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20	_____	_____	_____
21	The above changes were noted by me on this errata page		
22	before signing the attached verification of deponent. I have		
23	retained a copy of this errata page for my records, and the		
24	court reporter is to attach this page and my verification to		
25	the original transcript.		
	Dated: _____	JOSEPH ALLEN STRICKLAND	